

Appendix Seventeen

In The Matter Of:
Tricia Wachsmuth v.
City of Powell, et al.

Matt Brilakis
November 22, 2010

Bray Reporting
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF WYOMING
3 -----
4 TRICIA WACHSMUTH,)
5 Plaintiff,)
6 vs.) NO. 10-CV-041J
7)
8 CITY OF POWELL, AND IN THEIR)
9 INDIVIDUAL CAPACITY, TIM)
10 FEATHERS, CHAD MINER, MIKE)
11 CHRETIEN, ROY ECKERDT, DAVE)
12 BROWN, MIKE HALL, BRETT LARA)
13 MATT MCCASLIN, ALAN KENT, MATT)
14 DANZER, OFFICER BRILAKIS, LEE)
15 BLACKMORE, CODY BRADLEY, KIRK)
16 CHAPMAN, JOHN DOES #1-#4,)
17 Defendants.)
18
19 DEPOSITION OF MATT BRILAKIS
20 9:53 a.m., Monday, November 22, 2010
21
22 Pursuant to notice, the deposition of MATT
23 BRILAKIS was taken in behalf of Plaintiff in accordance
24 with the applicable Federal Rules of Civil Procedure at
25 270 North Clark, Powell, Wyoming, before Vonni R. Bray,
Registered Professional Reporter and Notary Public of
the State of Montana.

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Also Present: Tim Feathers

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Direct Examination by Mr. Gosman

1 MATT BRILAKIS,
2 having been first duly sworn, testified as follows:
3 DIRECT EXAMINATION
4 BY MR. GOSMAN:
5 Q. Officer, before we begin today, I'd like to
6 go over some general instructions concerning the
7 deposition. Have you ever given a deposition before?
8 A. Yes, sir, I have.
9 Q. And approximately how many times?
10 A. Twenty, 25.
11 Q. Okay. In connection with what kinds of cases
12 did you give depositions?
13 A. Criminal cases, also civil cases.
14 Q. Okay. And have you ever been a party to a
15 lawsuit?
16 A. No, sir, I haven't.
17 Q. You're familiar, then, with the process for
18 giving depositions, correct?
19 A. Yes, sir.
20 Q. I'll ask the questions here today, and you're
21 under oath with respect to your answers; do you
22 understand that?
23 A. Yes, sir, I do.
24 Q. If there is a problem understanding any of my
25 questions, please take the time to ask me to clarify

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Direct Examination by Mr. Gosman

1 what I've asked of you before you give an answer. Will
2 you agree to that?
3 A. Yes, sir, I will.
4 Q. And it is important that you answer with an
5 audible yes or no, rather than an uh-huh or huh-uh.
6 Those types of statements don't add up very well on the
7 record. Will that be okay?
8 A. Yes, sir.
9 Q. And we can take a break at any time, but not
10 while a question is pending, okay?
11 A. Yes, sir.
12 Q. What is your full name, Officer?
13 A. Matthew Brilakis.
14 Q. And what is your current address?
15 A. My work address is 250 North Clark Street,
16 Powell, Wyoming 82435.
17 Q. And are you currently on any medication that
18 would impair your ability to give truthful answers here
19 today?
20 A. No, sir, I am not.
21 Q. Is there any other medical reason why you
22 might not be able to answer the questions truthfully
23 and fully in this deposition today?
24 A. No, sir.
25 Q. Have you ever been arrested for any crime

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1 other than a traffic violation?
2 A. No, sir.
3 Q. Have you ever been accused of a crime
4 involving dishonesty?
5 A. No, sir.
6 Q. Have you ever been divorced?
7 A. No, sir.
8 Q. Have you ever had a restraining order placed
9 against you?
10 A. No, sir, I have not.
11 Q. What is your educational background,
12 Officer Brilakis?
13 A. I've got an associate's degree in criminal
14 justice.
15 Q. And where did you obtain that associate's
16 degree?
17 A. Broadview Community College down in Florida.
18 Q. What year was that?
19 A. I think it was 2006.
20 Q. And you graduated from high school in what
21 year?
22 A. 1979.
23 Q. And take a minute and describe your work
24 history from the time you graduated from high school.
25 A. I was in the United States Coast Guard for 6

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Direct Examination by Mr. Gosman

1 years. I started with the Coral Springs Police
2 Department down in Coral Springs, Florida, from January
3 of 1986 through June of 2007. And then I moved out
4 here to Powell.
5 Q. What brought you to Powell?
6 A. I retired from Coral Springs PD and wanted to
7 move to Wyoming.
8 Q. And what was your starting position with the
9 Powell Police Department?
10 A. Patrol officer.
11 Q. And what is your position -- what was your
12 position on the 24th of February, 2009?
13 A. Patrol officer.
14 Q. I understand that you have continuing
15 education requirements as a law enforcement officer in
16 the state of Wyoming. Is that correct?
17 A. Yes, sir, it is.
18 Q. How many hours do you have to attend of
19 continuing education?
20 A. I do not know.
21 Q. Are you current with your requirements in
22 that area?
23 A. As far as I know, yes.
24 Q. Do you know whether the in-service training
25 that is provided by the Powell Police Department

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1 qualifies for the education or training requirements of
2 the -- for a Wyoming police officer?
3 A. I would think so.
4 Q. You don't know for sure?
5 A. No, sir.
6 Q. Do you know whether you have applied any of
7 your in-service training to your certification as a
8 police officer?
9 A. In Wyoming?
10 Q. Yes.
11 A. Yes, sir, I have.
12 Q. You have applied your in-service training
13 with the Powell Police Department for -- to meet your
14 requirements for continuing education with the State of
15 Wyoming?
16 A. I'm not sure what you're asking, sir.
17 Q. Yes, it wasn't the best question.
18 The State of Wyoming requires law enforcement
19 officers, by law, to maintain a certain level of
20 training and education every year, correct?
21 A. Yes.
22 Q. And do you -- have you applied your
23 in-service training with the Powell Police Department
24 to meet those requirements?
25 A. If you're asking if I applied my in-service

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1 training to my patrol duties, the answer is yes. Is
2 that what you're asking? I'm not quite sure what
3 you're trying to say.
4 Q. Well, I'm not sure what you mean by patrol
5 duties.
6 A. Well, my regular day-to-day duties as a
7 police officer.
8 Q. All right. Now, I'm talking about whether or
9 not those in-service training hours were applied to the
10 number of hours that you're required to take every year
11 to maintain your certification as a peace officer in
12 the state --
13 A. I would think so, yes.
14 Q. Have you ever had any discipline, including
15 verbal discipline, within the last five years that is
16 not in your personnel file?
17 A. No.
18 (Exhibit 31 identified)
19 BY MR. GOSMAN:
20 Q. Let's go ahead and take a look at Exhibit 31
21 there if we can.
22 A. Okay.
23 Q. And I believe that your training records,
24 which are contained in this exhibit, are sort of in the
25 middle of the document. Could you find those for me,

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1 please?
2 Oh, I'm sorry, they are towards the end.
3 A. Okay.
4 MR. THOMPSON: Counsel, he's on Bates LGLP
5 Wachsmuth 88.
6 BY MR. GOSMAN:
7 Q. And 89. Yes, all right.
8 First, Officer, can you tell me if this is a
9 complete record of all your POST training?
10 A. Yes, sir, it looks to be.
11 Q. I don't see anything after 1/25 of 2007. Can
12 you explain that?
13 A. No, I can't.
14 Q. Have you had any training since January of
15 2007 that would be POST qualified?
16 A. I went through the Wyoming certification
17 class. We've had in-service training.
18 MS. WESTBY: To make this easier, it's
19 probably just an oversight on our part in producing
20 those records, I'm sure he's up to date. You probably
21 just don't have the most recent one.
22 MR. GOSMAN: Well, can you check and see if,
23 in fact, there's more to the record than what I've got,
24 and if there is, could you send it to me, I would
25 appreciate that?

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1 MS. WESTBY: We will do that.
2 MR. GOSMAN: Thank you.
3 BY MR. GOSMAN:
4 Q. Do you know whether since January 2007, you
5 were involved in any POST recognized training that
6 dealt with dynamic entry or patrol tactical response?
7 A. Dynamic entry, no, I don't believe so, not
8 here.
9 Q. Then let's go ahead and look at the record as
10 it exists on document numbers 88 and 89. And I'll ask
11 you to identify all of the training you've had
12 previously that deal specifically with -- and I'll
13 limit the question to dynamic entry.
14 A. Okay.
15 Q. Have you had a chance to take a look at that
16 list, Officer?
17 A. Yes, sir, I have.
18 Q. Okay. Is there anything in that list that
19 reflects POST training relevant to -- or involving
20 specifically dynamic entry?
21 A. Well, training record goes to 1999. I got
22 certified as a police officer in '86, so...
23 Q. Do you know if the Powell Police Department
24 has a copy of those earlier training records?
25 A. They should, sir, yes.

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1 Q. Do you have a copy of those earlier training
2 records?
3 A. In my personal files, probably, yes.
4 MR. GOSMAN: Could we take just a minute and
5 see if we can get this cleared up so we can get a
6 complete copy of those.
7 MS. WESTBY: Chief Feathers just went over to
8 get the newer records. Do you want him to get the
9 older records, too?
10 MR. GOSMAN: Yes, ma'am.
11 THE WITNESS: I don't know if we have them at
12 the station or I got them at my residence. I'm not
13 sure.
14 MS. WESTBY: Can you --
15 THE WITNESS: Take a walk over there and see
16 what I can find?
17 MS. WESTBY: Yeah.
18 MR. GOSMAN: Thank you very much.
19 (Recess taken 10:05 to 10:17
20 a.m., November 22, 2010)
21 BY MR. GOSMAN:
22 Q. Officer, we're back on the record, and I'm
23 looking at a Wyoming POST training record for Matt
24 Brilakis. And this document was just given to me, and
25 it apparently reflects your POST training from -- well,

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1 it actually -- it does go back to 1986, although I'm
2 not sure that it has the complete record of all POST
3 hours from 1986.
4 Would you take a minute and review that
5 document and then let's talk about what's there and
6 what's not there?
7 A. Yes, sir.
8 Q. Okay. Go ahead.
9 A. All right. Sir.
10 Q. Are the entries that are contained in the
11 documents numbered 88 and 89 of Exhibit 31 summarized
12 in the Wyoming POST training records as law enforcement
13 in-service from Florida from the years 1990 to the
14 year -- through the year 2005?
15 A. Yes, sir. But there might be some other
16 training that I had that is not on this -- on the
17 paper. It could have been in-service.
18 Q. The paper --
19 A. I'm sorry, on the Wyoming certification or
20 the Florida certification. It could have been
21 in-service, I know back in my old department, there was
22 a transition for the way to enter training records, and
23 some of that may not have made it on the training
24 records themselves.
25 Q. Well, and I notice that the documents, they

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1 are Bates stamped 88 and 89, only go back to 1999, and
2 then they end essentially at the end of 2006. There's
3 two entries in 2007, both occurring in January.
4 A. Yes, sir, I see that.
5 Q. All right. So there may have been law
6 enforcement in-service prior to January of 1999 that is
7 not reflected in your -- in the document that we've
8 identified as Bates stamped Number 88 and 89?
9 A. Yes, that would be true.
10 Q. All right. Is it fair to say that since the
11 first of January, 1999, we have a complete record of
12 your POST training?
13 A. Well, with all due respect to my old agency,
14 I wouldn't say that. But you never know.
15 Q. Okay. To the best of your knowledge, these
16 documents, and I'm referring to also the one that was
17 just produced, which is your Wyoming POST training
18 documents, do contain your POST recognized training
19 from January of 1999 to present?
20 A. Yes. But, again, there could be some
21 stuff -- there could have been -- there were other
22 things that, sir, that wouldn't be reflected in this.
23 I was a field training officer for 17 out of my 20
24 years in Springs.
25 I would have done different types of training

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1 with my officers as well as refresher training for
2 myself that would not show up in this record.
3 Q. Do you have a recollection, as you sit here
4 today, of any specific POST recognized training that
5 dealt with dynamic entry?
6 A. I don't know if it would be POST recognized.
7 I did -- whether it was stuff that we did in-service
8 training or stuff that I would -- did with my trainees
9 on dynamic entries, building searches, things along
10 those lines, sir.
11 Q. Now, going back to 1999 and the documents
12 that we've identified as Bates numbers 88 and 89, I
13 don't see anything that reflects dynamic entry
14 training.
15 Can you point it out to me if it's there, if
16 I've missed it?
17 A. I don't see it on here, sir. But it doesn't
18 mean it didn't occur.
19 Q. Is it possible that the training that you're
20 referring to that would have related to dynamic entry
21 occurred before January of 1999?
22 A. I don't think so, no. I can remember going
23 to -- there was a ten-hour class at some point, which
24 I -- it was within the last ten years or so, that dealt
25 with dynamic entries and things along those lines.

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1 Q. Anything else that you can specifically
2 remember?
3 A. Specifically, no. But we did a lot of
4 training down in my old department. I did a lot of
5 training with new officers that I trained.
6 While I was training them, it might have been
7 a few minutes here, ten minutes, 15 minutes, 30
8 minutes, that was just never documented.
9 Q. Let's go ahead and identify the Wyoming POST
10 training records. We don't have a Bates Number on this,
11 but I am looking at the document which was just
12 produced, and it does have your name, correct?
13 A. Yes, sir, it does.
14 Q. And it lists Wyoming POST training records.
15 And is it your understanding that this is an
16 accurate record of your POST training -- I think I may
17 have asked that question, but I'll ask it again -- as
18 it's stated on this record?
19 MS. WESTBY: Object to the form of the
20 question.
21 MR. THOMPSON: Join.
22 MS. WESTBY: And go ahead and answer if you
23 can.
24 THE WITNESS: Can you repeat the question for
25 me, sir?

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1 BY MR. GOSMAN:
2 Q. Is the document that you and I are looking
3 at, which contains your name and refers to Wyoming POST
4 records, an accurate collection of your POST training
5 period?
6 MS. WESTBY: Same objection.
7 MR. THOMPSON: Join.
8 MS. WESTBY: Go ahead.
9 THE WITNESS: You want me to answer that?
10 I'm sorry. My apologies.
11 MS. WESTBY: Go ahead and answer unless I
12 instruct you not to.
13 THE WITNESS: Okay. This record shows
14 classes on there. I do not believe that it shows all
15 the in-service training that we've had or general
16 discussion training or things along those lines.
17 BY MR. GOSMAN:
18 Q. And since you came to Wyoming, does this
19 record contain an accurate account of all of the POST
20 recognized training that you've had in Wyoming?
21 MS. WESTBY: Object to the form of the
22 question.
23 MR. THOMPSON: Join.
24 MS. WESTBY: Go ahead and answer.
25 THE WITNESS: No, I don't -- again, my

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1 question on the paperwork would be, sir, that it does
2 not reflect all the in-service training that we've had
3 at the police department.
4 BY MR. GOSMAN:
5 Q. Is that the only exception that you can think
6 of to the training that is listed on these POST
7 training records in terms of its being complete?
8 A. In reviewing the classes -- I'm looking at
9 the classes, sir, that I took down in Douglas, which is
10 the academy down there. When I look at the document,
11 sir, I don't see some of the in-service training that
12 we've had.
13 Q. That would be in-service at the Powell Police
14 Department?
15 A. Yes, sir.
16 Q. Do you know whether the Powell Police
17 Department in-service training is qualified as Wyoming
18 POST training?
19 A. That's a question I couldn't answer.
20 Q. Okay. We're going to take this document
21 which we've just received, the Wyoming POST training
22 records with your name on it, and we're going to insert
23 it in Exhibit 31 of the deposition exhibits. And it
24 will be inserted just in front of the documents that we
25 previously talked about, Bates Number 88 and 89.

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1 MS. WESTBY: And I would just note that this
2 exhibit does not reflect all of the training material
3 that was provided, just so the record is clear.
4 BY MR. GOSMAN:
5 Q. Have you ever had any SWAT training?
6 A. I have had training in my career on entries,
7 building entries. I've had training -- we had a little
8 bit on -- yes. The answer to your question is yes.
9 Q. All right. And you understand what the term
10 SWAT means?
11 A. Special Weapons and Tactics.
12 Q. And do you understand that SWAT is a term
13 that applies to special teams that are trained to
14 perform dynamic entries and other types of tactical
15 operations?
16 A. Yes, sir.
17 Q. And have you ever trained with a SWAT team?
18 A. No, sir. I've had training -- in Florida it
19 was called special response team. SRT team. We had
20 training where the SRT team members would conduct
21 in-service training, whether it be on firearms,
22 entries, things along those lines, sir.
23 Q. Did you serve on a special response team in
24 Florida?
25 A. No, sir, I did not.

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1 Q. Do you know if the Powell Police Department
2 has a special operations team?
3 A. No, sir, we do not.
4 Q. When was the last time the Powell Police
5 Department performed a dynamic entry with a team
6 similar to the one that was used in the Wachsmuth
7 residence, and that would be prior to that night?
8 A. I couldn't tell you that, sir.
9 Q. Have you ever participated in a dynamic entry
10 with the Powell Police Department involving a team
11 similar to the one that was assembled to effect the
12 Wachsmuth warrant?
13 A. No, sir, I had not.
14 (Exhibit 35 identified)
15 BY MR. GOSMAN:
16 Q. Let's go ahead and take a look at Exhibit 35
17 for a moment. It looks like you arrived at the Powell
18 Police Department in 2007. Would that be correct?
19 A. Yes, sir, I started here July 5th, 2007.
20 Q. So we don't need to worry about any of the
21 in-service training records that are in Exhibit 35
22 prior to that date.
23 Let's go ahead and go to the year 2007. I'm
24 not sure there are any records for in-service training
25 in the year 2007. Take a look though and make sure I'm

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1 correct.
2 A. (Witness complies.)
3 Q. Do you see any training records there for the
4 year 2007?
5 A. No, sir, I don't.
6 Q. Have you been involved in any of the
7 in-service training that is reflected in these records
8 beginning in the year 2008?
9 A. Well, this stuff here from Friday training
10 from December '08 through February '09.
11 Q. Yes. Were you involved in those training
12 exercises or classes?
13 A. Well, without having a roster here to make
14 sure that I was there. But I would say, yes, I've been
15 involved in some of them.
16 Q. You're not sure which ones?
17 A. No. No, sir, I am not.
18 Q. Have you been involved in any training since
19 you arrived at the Powell Police Department that dealt
20 with dynamic entry?
21 A. No, I don't think so.
22 Q. Do you know if Officer McCaslin had ever
23 detonated a flashbang device before the 24th of
24 February, 2009?
25 MS. WESTBY: Object to the form of the

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1 Q. And was there an officer in charge of that
2 training exercise?
3 A. Yes, sir.
4 Q. Who was that?
5 A. I think it was Officer Miner.
6 Q. And did you have any classroom instruction
7 relative to the flashbang devices before they were
8 deployed?
9 A. We talked about it at the range.
10 Q. What did you talk about?
11 A. And actually we talked -- we had an
12 in-service training on it. We had -- we talked about
13 it before we went out to the range a week or two
14 beforehand.
15 Q. What did you talk about?
16 A. Basically the proper way of room entry and
17 the proper way to deploy the flashbang.
18 Q. Do you remember anything about the training
19 that you had in terms of the proper way to deploy the
20 flashbang?
21 A. No. Just basically put it in a room. The
22 proper way to pull the pin, release it, where to throw
23 it in the room.
24 MR. GOSMAN: By the way -- we'll leave this
25 on the record, but we're going to interrupt the

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1 question.
2 MR. THOMPSON: Jo n.
3 Go ahead.
4 THE WITNESS: I don't know the answer to that
5 question, sir.
6 BY MR. GOSMAN:
7 Q. When I use the phrase dynamic entry, I also
8 include the use of devices such as flashbang devices.
9 Have you trained in -- with the Powell Police
10 Department -- ever, in the use of a flashbang device?
11 A. Ever?
12 Q. Yes.
13 A. Yes, sir, I have.
14 Q. In connection with your service with the
15 Powell Police Department?
16 A. Yes, sir, I have.
17 Q. When was that?
18 A. It was recently. In the last month or so,
19 two months.
20 Q. Tell me about that. What did you do?
21 A. We went out to the range and we set up a
22 simulated room with simulated targets, we deployed
23 flashbangs and engaged a few targets.
24 Q. When was that?
25 A. Within the last two months or so.

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1 deposition for just a moment. I have never gotten the
2 manual that Miner received from his DEF-TEC training on
3 the flashbang device.
4 I want to call that to your attention and let
5 you know that I haven't gotten it and I do need that.
6 MR. THOMPSON: I believe he's got it
7 individually, doesn't he? I mean he's got -- outside
8 of...
9 MR. GOSMAN: He did have the manual, I know
10 that. And I think he brought it here, but I just
11 didn't get a copy.
12 MS. WESTBY: Is this the one that's after?
13 MR. GOSMAN: Yes. This was in 2009, fall of
14 2009, I believe.
15 BY MR. GOSMAN:
16 Q. Officer, when did you first learn that you
17 would be doing a dynamic entry in the Wachsmuth warrant
18 service?
19 A. That day. That evening.
20 Q. And why don't you take just a minute and tell
21 me what you were doing and who you spoke with when you
22 first learned about this.
23 A. Well, we had a briefing. We had a briefing
24 beforehand. We were called in and -- I was not part of
25 the entry team.

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1 Q. Right. You were assigned to secure the back
2 door?
3 A. Back gate, originally, sir, yes.
4 Q. Back gate. Were you assigned to supply the
5 diversion at the back of the house by breaking a
6 window --
7 A. No, sir, I was not.
8 Q. -- original plan?
9 Do you know who was involved in that?
10 A. I do not.
11 Q. So you weren't asked to participate in
12 breaking a window in the back of the house?
13 A. No, sir, not as far as I know, no.
14 Q. And did somebody call you before you were
15 asked to come down to the station?
16 A. Yes, sir, I was called -- yes.
17 Q. And were you at home?
18 A. Yes.
19 Q. And do you know what time it was?
20 A. No.
21 Q. Was it after dark?
22 A. I believe it was early evening.
23 Q. What time was your shift over that day?
24 A. I worked mid -- I worked 10:00 p.m. to
25 6:00 a.m. that night -- that evening.

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1 Q. At night?
2 A. Yes, sir.
3 Q. And who did you speak to?
4 A. I don't remember who called me in.
5 Q. What were you told when you were called in?
6 A. Just to come in for a warrant -- or I was
7 called in. I don't remember exactly what was -- what
8 the conversation was.
9 Q. And when you arrived at the police station,
10 who was there, if you remember?
11 A. I don't remember exactly who.
12 Q. But were there a number of officers
13 assembled?
14 A. Yes, sir, there were.
15 Q. And did officers arrive after you arrived at
16 the police station?
17 A. I don't remember what order we arrived in,
18 sir.
19 Q. Who was in charge of the meeting?
20 A. I believe Sergeant Chretien was.
21 Q. Was Chief Feathers there?
22 A. No, he was not.
23 Q. Was Officer Kent there?
24 A. Yes.
25 Q. And Sergeant Eckerdt?

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1 A. Yes, sir.
2 Q. Who spoke at the meeting?
3 A. Sergeant Chretien did, and I'm sure other
4 officers did. I don't remember exactly who spoke.
5 Q. What was -- what did Sergeant Chretien
6 announce when he had everyone there?
7 A. As far as what?
8 Q. As far as what you were doing.
9 A. We were doing -- it was a search warrant was
10 being conducted.
11 Q. Okay. And were you told that you would be
12 using an entry team?
13 A. Yes.
14 Q. And were you told that there would be a
15 diversionary device employed?
16 A. Yes, sir, there was.
17 Q. And were you told that there would be
18 multiple diversions at the house?
19 A. I don't remember the conversation about the
20 multiple diversions, no.
21 Q. And you were given a specific assignment
22 relative to the back of the house?
23 A. Yes, sir.
24 Q. What was that assignment?
25 A. Basically I was to be on the southwest corner

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1 of the house by the back gate, and then eventually move
2 up to the northwest corner by the -- there was a
3 gate -- there's a fence surrounding the property. And
4 I was to standby by the gate. By the -- it would be
5 the northwest corner of the house.
6 Q. Was there any other discussion about
7 alternatives to the entry plan that was being
8 discussed?
9 A. I don't recall if there were, no. There may
10 have been but, you know, I just found out pretty much
11 what my role was.
12 Q. Did it appear to you that the plan had been
13 made by the time you arrived and that you were -- the
14 officers were simply being informed of what roles they
15 would play?
16 A. Well, I would think that the role -- the plan
17 was set, but if we had any specific concerns or
18 anything else, that would have been brought up at that
19 time.
20 Q. Did anyone voice any concerns about using a
21 dynamic entry at the Wachsmuth residence?
22 A. I don't recall.
23 Q. Did you have any concerns about it?
24 A. No, sir, I didn't.
25 Q. Why not?

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1 A. I did what I was told.
2 Q. Did you learn any reasons why it was felt to
3 be necessary to use a dynamic entry for the service of
4 this warrant?
5 A. The information that I learned was that they
6 felt that the dynamic entry was the best for this
7 scenario.
8 Q. That was it?
9 A. Well, what are you asking me, sir?
10 Q. What specific information was there provided
11 that demonstrated that that was the best scenario for
12 this situation?
13 A. Well, it was possibly --
14 MR. THOMPSON: Hold on. Objection as to
15 form.
16 MS. WESTBY: Join.
17 BY MR. GOSMAN:
18 Q. Go ahead.
19 MS. WESTBY: And go ahead and answer if you
20 can.
21 THE WITNESS: I'm sorry, can I get the
22 question again, sir?
23 BY MR. GOSMAN:
24 Q. What specific information was discussed about
25 the reasons why a dynamic entry was considered --

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1 BY MR. GOSMAN:
2 Q. You didn't hear anything, though, correct?
3 A. No, sir, not that I can recall, no.
4 Q. Did you wear body armor that night?
5 A. Yes, sir, I always wear body armor when I'm
6 at work.
7 Q. Did you wear any extra body armor that night?
8 A. No, sir.
9 Q. And did you bring your body armor with you to
10 the police station?
11 A. My body armor is on my body when I put my
12 uniform on, sir.
13 Q. And is that true of the other officers?
14 A. Yes, sir. It's a policy.
15 Q. One of the officers testified that there was
16 additional body armor that was used that night. Do you
17 remember anything about that?
18 A. No, sir, I don't.
19 Q. Were the long rifles distributed while you
20 were in the meeting?
21 A. Were they distributed?
22 Q. Given to the officers on the entry team?
23 A. Well, I believe -- they had them. I don't
24 know how they -- I don't know how they were given out,
25 sir.

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1 A. Well, it was possibly a narcotics grow house
2 and there were weapons inside the house.
3 Q. Do you remember anything else?
4 A. There was -- the person involved, the target
5 of the investigation, was -- possibly had some issues
6 where it could have been a threat to law enforcement.
7 Q. What issues, do you remember specifically?
8 A. I think there were mental health issues.
9 Q. Anything else?
10 A. Nothing that really sticks out in my mind
11 right now, sir.
12 Q. Do you know who assigned Chretien to serve as
13 the team leader for this warrant service?
14 A. No, sir, I don't.
15 Q. Were you consulted in the decision to use
16 this dynamic entry into the Wachsmuth home?
17 A. No, sir, I wasn't.
18 Q. Were any of the other officers that were
19 there that night consulted in the decision to use a
20 SWAT-type entry into this home?
21 MS. WESTBY: Object to the form of the
22 question. Go ahead.
23 MR. THOMPSON: Join.
24 THE WITNESS: I can't answer that question
25 'cause I don't know.

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1 Q. They had them when you were there?
2 A. I don't know. Were they at the briefing?
3 No, I don't believe so.
4 But, again, I don't know how -- sir, I don't
5 remember how the officers got the weapons, if that's
6 what you're asking me.
7 Q. That's what I'm asking.
8 A. Okay.
9 (Exhibit 10 identified)
10 BY MR. GOSMAN:
11 Q. Why don't you go ahead and take a look for
12 just a moment at Exhibit 10. And we're going to have
13 to take -- I've got a question pending.
14 Well, actually, I don't. You take a look at
15 that and I'll be right back.
16 (Recess taken 10:43 to 10:45
17 a.m., November 22, 2010)
18 BY MR. GOSMAN:
19 Q. Okay. Have you ever seen this document
20 before?
21 A. Have I ever seen this document?
22 Q. I'm sorry, we're on Exhibit 10.
23 A. Oh, I'm sorry. I'm on 11.
24 Have I ever seen the document before, sir?
25 Q. Yes.

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1 A. I don't know if I seen he actual document.
2 I know that Marissa had it the last few days at the
3 station. I didn't take a look at it, though.
4 Q. Did you see Marissa there that evening taking
5 notes?
6 A. She was at the briefing sir.
7 Q. Do you know whether she was actually assigned
8 to keep a record of the meeting that night?
9 A. That, I don't know, sir
10 Q. Why don't you go ahead and take a minute and
11 look at Exhibit I0, and let's start with the list that
12 is on the left-hand column there towards the top.
13 As far as you know, does that list accurately
14 reflect the assignments that were made that night for
15 the officers that served the Wachsmuth warrant?
16 A. Yes, sir, it does, as far as I know. Again,
17 I didn't take part in the actual writing of this
18 document. I was in the briefing.
19 Q. Did you know that the warrant was a
20 knock-and-announce warrant?
21 A. I'm sure it was discussed, but can I say for
22 sure that I recall that, sir? No, I can't.
23 Q. And did you know that -- did you understand
24 that there was intelligence being gathered at the
25 Wachsmuth home that was going to be used in connection

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1 with the entry of the residence?
2 A. I was told that there was an officer watching
3 the residence while we were in the briefing.
4 Q. And do you know if that entry below
5 knock-and-announce there in the middle of the page,
6 which says one male, one female, one 10 years of age
7 child, was information that came from that source?
8 A. That, I could not tell you, sir.
9 Q. Did you hear that there was a young child in
10 the residence?
11 A. I heard there was a ten-year-old -- there was
12 a child possibly in the residence. Whether it was
13 accurate or not, I don't know.
14 Q. Well, you know now that there was no small
15 child in the residence, correct?
16 A. Yes, sir, I do.
17 Q. Were you informed that there were no more
18 than three adults in the residence?
19 A. That there were no more than three adults,
20 sir?
21 Q. Yes. Do you see that entry there?
22 A. Yes, sir, I'm looking at it now where it says
23 one male, one female, ten-year-old child, no more than
24 three adults.
25 Q. Do you remember hearing that?

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1 A. Do I remember hearing that? No.
2 Again, so you're asking me questions that
3 happened at a briefing, whenever it was. I don't
4 recall every little detail of that briefing, sir.
5 Q. I certainly understand that. So what we're
6 interested in here is what you do recall.
7 A. Okay. Which isn't going to be a whole lot.
8 Q. All right. Were you aware that everyone was
9 to get cuffed? Do you remember that being discussed?
10 A. No, I do not -- no, I don't.
11 Q. And that Wachsmuth was to be scooped out of
12 the house?
13 A. No. Again, sir, if you're asking me if I
14 recall specific recollections of that briefing where
15 these words were actually said, the answer is no.
16 Q. Okay. And handguns loaded everywhere in the
17 house, do you remember that statement or something like
18 that?
19 A. I remember something about that there were
20 handguns in the residence, sir.
21 Q. And do you remember hearing that there was
22 stuff being grown under the stairs?
23 A. I recall hearing that there was stuff being
24 grown inside the residence. Where exactly it was, I
25 wasn't sure.

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1 Q. Did you understand that was the purpose of
2 the search warrant, was to locate the existence of
3 growing marijuana plants?
4 A. Yes, sir.
5 Q. And we have an entry at the bottom of the
6 page there that says "Tom Wachsmuth stays in lobby."
7 Do you remember that being discussed?
8 A. No, sir, I don't.
9 Q. On the right-hand side of the page, towards
10 the bottom there, we have a list. There are seven
11 items listed in order. Do you remember those items
12 being discussed?
13 A. I remember that it was being discussed about
14 an ambulance in case one was needed. We're talking --
15 oh, I'm sorry. We're talking about call ambulance,
16 sir, or we're talking about --
17 Q. Talking about the numbered list, yeah.
18 A. My apologies, sir.
19 Q. Go ahead.
20 A. Yeah, I believe that was the plan. Do I
21 remember the actual discussion? No, sir, I don't.
22 Q. And what do you remember about the ambulance
23 being called?
24 A. Just that it's always a -- I would think it
25 would be a good idea in case of an entry like this to

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1 have an ambulance in the area.
2 Q. Sure. And do you remember that specifically
3 being discussed?
4 A. I remember a conversation about it.
5 Q. Then on the second page of the exhibit, we
6 have a list again. And we have -- we have these
7 numbers, LG4, and then that's next to Chretien; and
8 next to Danzer we have LG3; Hall is LG2; Chapman, LG1.
9 Do you know what those terms mean?
10 A. No, sir, not now, no.
11 Q. Not now, you say?
12 A. I don't know what the numbers mean. I don't
13 know what LG4, the other LG numbers mean.
14 Q. Yeah. Do you know if it was discussed what
15 order the men would enter the residence in?
16 A. It was discussed. I don't recall what the
17 exact order was, no.
18 Q. Do you know anything about this notation at
19 the bottom of the page that says open window?
20 A. No, sir, I don't.
21 Q. Did you speak with any of the other officers
22 there that evening?
23 A. I'm sure I did.
24 Q. Do you remember any specific conversations
25 you had?

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1 A. No, other than what my assignment was, no.
2 Q. All right. Now, let's take a look at
3 Exhibit I0, and we have at the very top of the page --
4 MR. THOMPSON: First page, Counsel?
5 MR. GOSMAN: Yes, top of the first page.
6 BY MR. GOSMAN:
7 Q. -- the entry Brown/Brilakis/Blackmore and
8 then, space, garage.
9 A. Yes, sir.
10 Q. Does that ring a bell with you?
11 A. Yes, sir, it does.
12 Q. What does it mean?
13 A. It means that that was the area I was to
14 search.
15 Q. You were to search the garage?
16 A. Yes, sir. After everything was concluded.
17 Q. All right. So once the area had been
18 secured, then you were to begin the search operation?
19 A. Yes, sir.
20 Q. And did you have -- and you did have a role
21 prior to the search of the garage, correct?
22 A. Yes, sir, I did.
23 Q. And that was to secure the perimeter?
24 A. It was to be on the back perimeter, on the
25 southwest side of the fence area, the backyard, and

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1 then eventually move up to the northwest corner of the
2 fence area, which would have been towards the back of
3 the house.
4 Q. Do you remember -- and I'm still on
5 Exhibit I0. In the middle of that page there's a
6 reference there to 20 to 30 plants.
7 Do you remember anything being said about the
8 number of plants that were in the residence, that were
9 suspected of being in the residence that night?
10 A. I don't remember any specific conversation.
11 I know that there were supposed to be plants inside the
12 residence.
13 Q. Did you speak with Officer Miner that night?
14 A. I'm sure I did.
15 Q. Did you have any discussions with him about
16 the confidential informant?
17 A. No, sir, I did not.
18 Q. Did you learn the name of the confidential
19 informant?
20 A. I don't know who it was, no. I'm sure I
21 learned about it, but I don't know who it was.
22 Q. Do you remember thinking that you knew that
23 name, that individual?
24 A. No, sir, I do not.
25 Q. Okay. About how long did the meeting last at

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1 the police station, do you know? Can you guess?
2 A. No.
3 Q. No, I don't want you to guess. I'm sorry.
4 Do you know?
5 A. No, sir, I do not know.
6 Q. Was it more than --
7 MS. WESTBY: Jeff.
8 MR. GOSMAN: Yes.
9 MS. WESTBY: Just for purposes of scheduling,
10 if you get to the point where you think you have 15, 20
11 minutes, half hour left, let me know so that we can
12 call the next witness.
13 MR. GOSMAN: Okay. We're probably pretty
14 close to that right now.
15 BY MR. GOSMAN:
16 Q. Did you speak with Officer Blackmore that
17 evening?
18 A. No, I don't -- I don't think I did, other
19 than maybe passing conversation.
20 Q. Were you teamed with Officer Blackmore at any
21 point that evening?
22 A. I know he was there. I don't remember if I
23 saw him or not.
24 Q. Who did you leave the station with?
25 A. Oh, good question. It might have been

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1 Officer Lara, but I'm not sure. I can't recall exactly
2 who I drove to the scene with, sir.
3 Q. It was just you and one other individual?
4 A. Yeah, I believe so.
5 Q. Do you know if that individual had been given
6 the same assignment you had, or were you teamed up that
7 way at the station?
8 A. I'm pretty -- that we went -- since we were
9 all -- since my area of responsibility, I would --
10 again, without recalling exactly was -- I would have
11 ridden to the scene with another officer who was on
12 that assignment. But, no, I don't remember exactly who
13 I went to the scene with, sir.
14 Q. Let's go back -- okay, to Exhibit 10 for just
15 a moment. And it does appear that Officer Lara was
16 assigned the back door. And that's on the second page
17 of Exhibit 10. Do you remember that?
18 A. I do know that it was Officer Lara,
19 Officer Bradley and Investigator Brown and I were
20 assigned to that back fence area.
21 Q. What is Officer Lara's first name?
22 A. Brett.
23 Q. Okay. Do you remember being with anyone else
24 when you arrived at the Wachsmuth residence?
25 A. You asking me specific names of officers,

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1 sir?
2 Q. Yes.
3 A. You're talking by the back gate, sir?
4 Q. No, I'm talking about when you arrived at the
5 Wachsmuth house in the vehicle.
6 A. I spoke to Investigator Brown, Officer Lara,
7 Officer Bradley and myself.
8 Q. What was that conversation?
9 A. Well, basically, how we were going -- what
10 roles each of us was going to take.
11 Q. So you assembled with the team that was going
12 to secure the back perimeter; is that correct?
13 A. Yes.
14 Q. I'm going to hand you a piece of paper, and
15 we'll mark it as -- I think we'll mark it as
16 Exhibit 50.
17 (Exhibit 50 identified)
18 BY MR. GOSMAN:
19 Q. And what I'd like you to do is show me where
20 you were at when you first arrived at the Wachsmuth
21 residence, who was with you, and to the best of your
22 ability to remember, where everyone else was.
23 A. You want me to draw a picture?
24 Q. Yes, I do.
25 A. All right. No credit for my artwork, right,

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1 sir?
2 Q. That's correct.
3 A. All right.
4 Q. And you might start with sort of the
5 perimeter of the house.
6 A. Okay.
7 Q. And by the way, when I say perimeter of the
8 house, I think it would help us if we have the sidewalk
9 and sort of the lot area, because we understand that
10 the officers were in the lot area and not in the house
11 at that time.
12 A. I made a mistake. Can I start over?
13 Q. Yep, you can. If you'd like, you can look at
14 Exhibit 10, which has the perimeter of that lot, I
15 think, fairly accurate.
16 A. Yeah, I think I'd like to do that.
17 Q. I think it's right there.
18 A. Right here?
19 Q. I believe so.
20 A. I think I need to do -- that's the house --
21 okay. You don't want this to scale, do you, sir?
22 Q. No.
23 A. That would be the wood fence. You want me to
24 show you this, sir?
25 Q. Yeah, let's do that.

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1 A. This is the wood fence back here, sir. This
2 is the wood fence here. I believe this was chain link.
3 And this is a wood fence here. The driveway, the
4 garage and the main residence.
5 Q. Okay.
6 A. Investigator Brown, Officer Bradley,
7 Officer Lara and myself -- now, again, to the best of
8 my recollection -- were in this position back here.
9 At some point, to the best of my
10 recollection, Officer Lara, Investigator Brown and
11 myself moved up to this point.
12 Q. Did you go into the backyard?
13 A. There was a gate here that we moved up to.
14 And I don't think I went in the backyard, no.
15 Q. So at some point during the entry phase of
16 this operation you moved up to the gate that was next
17 to the house?
18 A. Yes, sir.
19 Q. Okay. Why don't you go ahead and mark that
20 gate and then put an X there and just describe it as
21 the place you ended up.
22 A. (Witness complies.)
23 Q. And you did not enter the house, then,
24 Officer; is that correct?
25 A. No, sir, I did not.

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1 Q. And did you hear the announcement, "Police,
2 search warrant"?
3 A. I don't recall if I did, r.o.
4 Q. Did you hear a dog barking?
5 A. I don't recall that either. But, again, if
6 you're asking me specifically, sir, if I specifically
7 remember hearing that stuff, no, I do not.
8 Q. Okay. You were unable to see the entry team
9 at the front of the house; is that correct?
10 A. Yes, sir, I was.
11 Q. What was the signal that you were to operate
12 on in terms of taking your next step in this -- in the
13 unfolding of this plan?
14 A. Probably be the signal of the flashbang.
15 Q. Did you hear the flashbang go off?
16 A. Yes.
17 Q. What did you do when you heard the flashbang
18 go off?
19 A. We moved up towards the -- I moved north
20 along the fence line.
21 Q. Did you see anything in the backyard?
22 A. No, sir, I did not. The fence was pretty
23 high.
24 Q. Did you know that there were officers in the
25 backyard?

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1 A. No. Not that I recall, no.
2 Q. It seemed to me that Officer Brown indicated
3 that several officers tried to jump the fence, one of
4 them got stuck on the fence. That would have been at
5 the back of the house. Do you remember that?
6 A. That might have been Officer Bradley. I
7 remember we took a ladder, a step stool.
8 Q. To get over the fence?
9 A. Yes.
10 Q. Okay. Go ahead.
11 A. Officer Bradley is kind of short.
12 Q. He had a little trouble getting over the
13 fence, do you remember?
14 A. Yes, sir. I don't remember -- I didn't
15 actually watch him go over the fence. I heard it was
16 kind of comical, though.
17 Q. You heard about it?
18 A. Yeah.
19 Q. So you weren't with the group that went over
20 the fence in the backyard?
21 A. No, sir, I didn't go over the fence, no.
22 Q. Did you see anyone during the time that you
23 proceeded from the corner where you arrived, on
24 Exhibit 50, up to the gate next to the house, anyone
25 other than the officer that you were with -- or

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1 officers you were where?
2 A. I don't believe so, no.
3 Q. Was there a signal that was to be understood
4 for when the -- when the house was secured?
5 A. Was there a signal?
6 Q. Yes. In other words, was there some kind of
7 sign that was to be given to the officers saying, okay,
8 the house is secured?
9 A. I don't know. There might have been radio
10 traffic, but I don't recall that.
11 Q. After you arrived at the gate, what was the
12 next event that occurred?
13 A. I was to stand by the gate.
14 Q. And you stood there for how long?
15 A. Oh, few minutes.
16 Q. Five? Ten?
17 A. I don't know.
18 Q. And did officers eventually come out of the
19 house then?
20 A. Yes.
21 Q. Is that how you knew that the house had been
22 secured?
23 A. Yes.
24 Q. And do you remember how long that took?
25 A. No, sir.

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1 Q. Was it more than ten minutes?
2 A. I don't know.
3 Q. And were you simply standing there at the
4 gate for the time that it took for the officers to
5 clear the house?
6 A. Yes. Crouched.
7 Q. Did you have your weapon drawn?
8 A. No, I'm sure -- I think I put it away by that
9 point. Or I might have had it out. I don't recall.
10 Q. Was there a debriefing after this warrant had
11 been served?
12 A. No. Not that I attended.
13 Q. Were you involved in any kind of session
14 where this search warrant was discussed after the
15 search warrant had been executed?
16 A. No, sir. I was not.
17 Q. Did you prepare a report in this case?
18 A. No, sir, I did not.
19 Q. Let's go ahead and mark this as Exhibit 50.
20 A. Do you want me to sign and date that, too?
21 Q. That would be fine. It's really not
22 necessary, though, frankly, Officer, that we sign and
23 date it.
24 Have you discussed this case with any of the
25 officers that were involved since the search warrant

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1 was served that night?
2 A. Yes.
3 Q. Did you learn that Tricia Wachsmuth had been
4 used as a human shield?
5 MS. WESTBY: Object to the form of the
6 question.
7 MR. THOMPSON: Objection to the form of the
8 question. And to the extent that any of those
9 conversations took place in the presence of your
10 attorney, you're not to discuss those. Do you
11 understand that?
12 THE WITNESS: Say that again, sir.
13 MR. THOMPSON: To the extent that any of
14 those conversations took place in the presence of your
15 attorney --
16 THE WITNESS: Okay.
17 MR. THOMPSON: -- or attorneys, you're not to
18 discuss that.
19 THE WITNESS: Okay.
20 BY MR. GOSMAN:
21 Q. Did you hear from any of the other officers
22 that Tricia Wachsmuth had been used as a human shield
23 to go down the stairs?
24 A. Yeah, months later I learned about that.
25 Q. Who told you that?

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1 A. Officer Miner did.
2 Q. What did he say?
3 A. We just had a general conversation one night
4 months later after this whole thing occurred, and he
5 told me that there might have been a few issues with
6 the case.
7 Q. Okay. And was that one of them?
8 A. Yes.
9 Q. And did he -- were you aware that the
10 flashbang device started a fire in the Wachsmuth
11 residence?
12 A. No, sir, I was not.
13 Q. Did you hear the fire alarm go off or the
14 smoke alarm go off?
15 A. I don't recall, sir.
16 Q. Did you ever go into the Wachsmuth residence
17 that night?
18 A. No, sir, I did not.
19 Q. You did search the garage?
20 A. Yes, sir, I did.
21 Q. What did you find in the garage?
22 A. I didn't find anything in the garage.
23 Q. When you spoke with Officer Miner, were there
24 any other specific issues that might have been a
25 problem in the case other than that Tricia Wachsmuth

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1 had been used as a human shield?
2 MS. WESTBY: Object to the form of the
3 question. That misstates his testimony entirely.
4 MR. THOMPSON: Join.
5 Go ahead if you can.
6 THE WITNESS: Officer Miner and I had a
7 conversation again months later after this occurred.
8 It was a general conversation about the case. I didn't
9 really ask a whole lot of questions about it. And I
10 figured whatever was -- that was pretty much it.
11 Now, can I clarify something, sir?
12 BY MR. GOSMAN:
13 Q. Yes, you may.
14 A. Okay. When I went in the garage, I looked
15 around for property inside the garage. I moved stuff.
16 I did not damage anything. I did not throw anything
17 around inside the garage or anything along those lines.
18 Q. Did you hear from any of the other officers
19 whether or not they had trained their weapons on Tricia
20 Wachsmuth?
21 A. No, I did not. Again, I don't recall any
22 specific conversations either.
23 Q. Have you communicated via e-mail about this
24 case with any of the other officers?
25 A. No, I don't think so, no.

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1 Q. I don't believe I have any other questions.
2 Thank you very much.
3 A. All right, sir. Thank you.
4 (Proceedings concluded at
5 11:10 a.m., November 22, 2010)
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1 DEPONENT'S CERTIFICATE

2 I, MATT BRILAKIS, do hereby certify, under
3 penalty of perjury, that I have read the foregoing
4 transcript of my testimony consisting of 52 pages,
5 taken on November 22, 2010 and that the same is, with
6 any changes noted below, a full, true and correct
7 record of my deposition.

8 PAGE LINE CORRECTION REASON FOR CORRECTION

9 _____
10 _____
11 _____
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22
23
24 MATT BRILAKIS Date
25

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1 CERTIFICATE

2 I, VONNI R. BRAY, Registered Professional
3 Reporter, and Notary Public for the State of Montana,
4 do hereby certify that MATT BRILAKIS was by me first
5 duly sworn to testify to the truth, the whole truth,
6 and nothing but the truth;

7 That the foregoing transcript, consisting of
8 53 pages, is a true record of the testimony given by
9 said deponent, together with all other proceedings
10 herein contained.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand this 11th day of December, 2010.

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18
19 
20

21 Vonni R. Bray, RPR
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23 Laurel, MT 59044
24 (406) 670-9533 Cell
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Matt Brilakis
November 22, 2010

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Appendix Eighteen

In The Matter Of:
Tricia Wachsmuth v.
City of Powell, et al.

Cody Bradley
November 23, 2010

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CODY BRADLEY - November 23, 2010
Direct Examination by Mr. Gosman

1 CODY BRADLEY,
2 having been first duly sworn, testified as follows:
3 DIRECT EXAMINATION
4 BY MR. GOSMAN:
5 Q. How are you today, Officer?
6 A. Tired.
7 Q. I'm sorry to hear that. Well, have you ever
8 given a deposition before?
9 A. No.
10 Q. All right. I'm going to go over a couple of
11 ground results with you before we start; will that be
12 okay?
13 A. Sure.
14 Q. I will ask questions today. And unless
15 you're instructed by your attorneys not to answer them,
16 you'll be required to answer the questions that I've
17 asked.
18 A. Okay.
19 Q. Of course your testimony is being taken under
20 oath, and it can be used later in proceedings in this
21 case.
22 A. Uh-huh.
23 Q. And it's very important if you don't
24 understand one of my questions for you to ask for
25 clarification; will you do that?

<p>CODY BRADLEY - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>1 A. Yes. 2 Q. And we've had a little trouble, not much, 3 about witnesses answering with uh-huh or huh-uh rather 4 than yes or no, and those phrases don't turn up on the 5 record very well. It's hard to tell what was meant. 6 So if you could answer yes or no and audibly to each 7 question. 8 A. Okay. 9 Q. And we can take a break at any time. 10 Hopefully we won't need much in the way of breaks this 11 afternoon, it shouldn't take long. But when you take a 12 break, it must be at the end of the answer to one of 13 your questions. We will not take a break while a 14 question is pending? 15 A. Yes. 16 Q. Could you recite your full name for the 17 record, sir? 18 A. Cody Joe Bradley. 19 Q. What is your current address? 20 A. 250 North Clark Street. 21 Q. You're tired today, but can you give truthful 22 testimony today? Do you feel comfortable with that? 23 A. Yes. 24 Q. Are you currently on medication that would 25 impair your ability to give truthful answers here</p>	<p>Page 5</p>	<p>CODY BRADLEY - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>1 Q. And your bachelor's degree, then? 2 A. Criminal justice. 3 Q. And how long have you been employed by the 4 Powell Police Department? 5 A. A little over six years. 6 Q. Were you employed as a police officer before 7 that time? 8 A. No. Not full-time. 9 Q. Explain to me what your previous law 10 enforcement experience was. 11 A. I worked as a reserve or part-time deputy for 12 a county in Oregon. 13 Q. What years were those? 14 A. 2000 through 2004. 15 Q. Okay. And why did you leave? 16 A. I was seeking full-time employment. 17 Q. And did you find it here in Powell? 18 A. Yes, I did. 19 Q. Had you already completed your academy 20 training, law enforcement academy training? 21 A. Where? 22 Q. When you came to Wyoming? 23 A. I completed it when I came to Wyoming. 24 25</p>	<p>Page 7</p>
<p>CODY BRADLEY - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>1 today? 2 A. No. 3 Q. Have you ever been arrested for a felony? 4 A. No. 5 Q. Have you ever been accused of a crime 6 involving dishonesty? 7 A. No. 8 Q. Have you ever had a restraining order placed 9 against you? 10 A. No. 11 Q. Have you ever been sued? 12 A. No. 13 Q. Have you ever been a party to a lawsuit? 14 A. No. 15 Q. What is your educational background, starting 16 with high school? 17 A. I have a high school diploma. 18 Q. From where? 19 A. From Hermiston, Oregon, Hermiston High 20 School. I have an associates of art degree from Blue 21 Mountain Community College and a bachelor's degree from 22 Western Oregon University. 23 Q. What was the associate's degree? In what 24 topic or field? 25 A. Criminal justice.</p>	<p>Page 6</p>	<p>CODY BRADLEY - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>1 (Exhibit 31 identified) 2 BY MR. THOMPSON: 3 Q. Okay. And let's turn to Exhibit 31. It's 4 document number 917 in this case. And it's about -- 5 it's just about halfway through this Exhibit 31. Yes, 6 if you'll turn to tab 31 there, officer. 7 A. Okay. 8 Q. All right. Before we start, as a reservist, 9 were you trained as a SWAT officer? 10 A. No. 11 Q. Have you ever had -- prior to your coming to 12 the Powell Police Department, have you ever had any 13 SWAT training? 14 A. No. 15 Q. And after you arrived at the Powell Police 16 Department, and I'm looking at your training records, 17 and I notice that you -- let's see on October 5th, of 18 2005 you participated in the Patrol Tactical Response 19 course; is that correct? 20 A. Yes. 21 Q. And since that time, have you had any 22 specific training in tactics associated with dynamic 23 entry? 24 A. I don't know. 25 Did we do entries last time?</p>	<p>Page 8</p>

<p>CODY BRADLEY - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>1 Q. And by the way, when I -- I sort of left that 2 question open-ended. But I'm referring specifically to 3 the timeframe of October 5th of 2009 through the 4 24th of February -- October 5th, 2005 through 5 February 24, 2009. 6 A. I did do training over in Cody. But it 7 wasn't a POST training. 8 Q. Okay. Tell me about that. 9 A. They were getting ready to tear down the high 10 school and rebuild it. So they let us practice raking 11 windows, throwing flashbangs, and using a ram on doors. 12 Q. Was that a multi-agency exercise? 13 A. Yes. 14 Q. Did you say it was not POST training? 15 A. No. 16 Q. Do you know if -- who was the officer in 17 charge, do you remember? 18 A. I don't know. 19 Q. Was it from another agency? 20 A. Yeah, I believe it was Cody Police 21 Department. 22 Q. And who was there with you from the Powell 23 Police Department? 24 A. Matt McCaslin. 25 Q. He was the only other individual?</p>	<p>Page 9</p> <p>CODY BRADLEY - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>1 A. When we do our training, most of the guys are 2 there, yes. 3 Q. Well, all right. But let's try to stay 4 focused on my question. I'm interested in whether you 5 trained as a team with the Powell Police Department, 6 and you don't need to look at the Chief every time you 7 answer a question. 8 MS. WESTBY: You know, objection. That's 9 ridiculous. 10 MR. GOSMAN: All right. 11 MS. WESTBY: I don't think you need to be 12 making comments like that. 13 BY MR. GOSMAN: 14 Q. All right. Have you ever trained as a team 15 with the entire Powell Police Department or most of the 16 officers specifically directed to dynamic entry? 17 MS. WESTBY: Object to the form of the 18 question. 19 MR. THOMPSON: Join. 20 MS. WESTBY: And your tone. 21 Go ahead. 22 THE WITNESS: Yeah. 23 BY MR. GOSMAN: 24 Q. When? 25 A. When Doug Pechtel was here training us.</p>	<p>Page 11</p>
<p>CODY BRADLEY - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>1 A. Yes. 2 Q. And do you remember when that was? 3 A. I don't. 4 Q. Can we pinpoint it within the last couple of 5 years? 6 A. Probably in the last three years, to my best 7 recollection. 8 Q. And other than that, you don't at least 9 recollect having any training specific to dynamic 10 entry? 11 A. No. 12 Q. Have you ever trained with the Powell police 13 officers as a team in areas, including dynamic entry? 14 Strike that. Have you ever participated with 15 the Powell Police Department as a team in any training 16 related to dynamic entry? 17 A. I'm not understanding. 18 Q. Have you ever trained with the Powell Police 19 Department as a team? In other -- all right -- have 20 you ever trained with the members of the Powell Police 21 Department as a team in dynamic entry? 22 A. I guess I don't understand what you mean by 23 team. 24 Q. I mean -- by team, I mean most, if not all, 25 of the Powell Police Department.</p>	<p>Page 10</p> <p>CODY BRADLEY - November 23, 2010 Direct Examination by Mr. Gosman</p> <p>1 Q. Okay. And that would have been your POST 2 training in October of 2005, correct? 3 A. Yes. 4 Q. Let's take a minute -- well, first of all, 5 have there been any other occasions? 6 A. No. 7 Q. All right. Now, let's talk for a minute 8 about this Doug Pechtel course in October of 2005. It 9 looks like a lot of the officers that are involved in 10 this case attended that course either in October or 11 late September. What do you remember about that? 12 A. What specific... 13 Q. Did you understand that the -- that most of 14 the members of the Powell Police Department were to be 15 taking that course? 16 A. Yes. 17 Q. Do you know why? 18 A. Because we were told to. 19 Q. Chief told you to? 20 A. Yeah. 21 Q. All right. Tell me a little bit about the 22 training that you had with Officer McCaslin over at the 23 old high school in Cody. Did you in fact deploy 24 flashbang devices at that time? 25 A. Yes.</p>	<p>Page 12</p>

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 Direct Examination by Mr. Gosman

1 Q. Were they live rounds or were they dummies?
 2 A. Live.
 3 Q. And did you deploy one?
 4 A. Yes.
 5 Q. Did you deploy two?
 6 A. I can't say for sure.
 7 Q. Okay. Did you see Officer McCaslin deploy a
 8 flashbang device?
 9 A. I don't remember.
 10 Q. Were you broken into groups at any time and
 11 given different training segments?
 12 MR. THOMPSON: Objection as to form.
 13 MS. WESTBY: Join.
 14 THE WITNESS: Yes
 15 BY MR. GOSMAN:
 16 Q. Were you with Officer McCaslin that day?
 17 A. Nope, he was not in my group.
 18 Q. Did you -- as far as you know, did each group
 19 participate in each of the different exercises that
 20 were made available that day?
 21 A. As far as I know.
 22 Q. All right. And did you have any specific
 23 training, other than the deployment of the flashbang
 24 device? In other words, were you shown how to do it?
 25 A. I don't remember.

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1 Q. Do you remember having any training materials
 2 that were circulated that dealt with -- specifically
 3 with flashbang devices?
 4 A. No.
 5 Q. Do you remember whether an instructor told
 6 you -- well, let me ask you this question: Do you know
 7 how to deploy a flashbang device?
 8 A. Yes.
 9 Q. What are the rules of deployment for that?
 10 MS. WESTBY: Object to the form of the
 11 question.
 12 MR. THOMPSON: Join.
 13 THE WITNESS: I guess I don't understand.
 14 BY MR. GOSMAN:
 15 Q. As you understand it. What rules -- are
 16 there any rules that you need to follow when you deploy
 17 a flashbang device?
 18 A. As to --
 19 Q. Looking where it's going, for instance.
 20 MR. THOMPSON: Objection as to form.
 21 MS. WESTBY: Join.
 22 THE WITNESS: I can't recall off the top of
 23 my head.
 24 BY MR. GOSMAN:
 25 Q. Have you had any training since then with

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1 regard to this -- to the flashbang device?
 2 A. Yes.
 3 Q. And when was that?
 4 A. When Doug Pechtel came back in -- I don't
 5 remember. Not prior to this incident, no.
 6 Q. Okay. All right. So when did you first
 7 become aware of the Wachsmuth warrant service?
 8 A. I received a phone call.
 9 Q. Who from?
 10 A. I don't know.
 11 Q. And what did you do in response to that phone
 12 call?
 13 A. I came into the office.
 14 Q. Do you know what time it was?
 15 A. I have no idea.
 16 Q. Were you -- were you on duty?
 17 A. No.
 18 Q. What time did your shift end on that day, do
 19 you know? Do you remember that?
 20 A. I don't remember what shift I was on that
 21 day.
 22 Q. Okay. And when you -- when you came down to
 23 the police station, who was there?
 24 A. Specifically, I don't remember who was there
 25 when I got there.

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 Direct Examination by Mr. Gosman

1 Q. Was it most of the group of officers that was
 2 involved in the Wachsmuth warrant service that night?
 3 A. I can't say for sure.
 4 Q. Did Officer Chretien address you as a group?
 5 A. Yeah.
 6 Q. Did you talk to anybody after you arrived
 7 before Officer Chretien addressed you as a group and
 8 learn anything about why you were there?
 9 A. No.
 10 Q. What did Officer Chretien say when he came
 11 in?
 12 A. I don't remember.
 13 Q. Did he give you an assignment?
 14 A. Yes.
 15 Q. Did he specifically give you that assignment?
 16 A. I don't remember if he did or somebody else
 17 did.
 18 (Exhibit I0 identified)
 19 BY MR. THOMPSON:
 20 Q. And do you remember -- let's go ahead and
 21 take a look at Exhibit I0 for a minute. Do you know
 22 Marissa Torczon?
 23 A. Yes, I do.
 24 Q. Do you remember seeing her there that night?
 25 A. Yes, I do.

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1 Q. Do you remember that she was taking notes?
2 A. Yes, I do.
3 Q. And I want you to take a -- I want you to
4 refer to these notes from time to time to help refresh
5 your recollection about what you may have heard that
6 evening. When you arrived and Sergeant Chretien began
7 addressing the officers, did you learn that a team was
8 being assembled to do a dynamic entry At the Wachsmuth
9 residence?
10 MR. THOMPSON: Objection as to form.
11 MS. WESTBY: Join.
12 THE WITNESS: No.
13 BY MR. GOSMAN:
14 Q. What did you learn about that?
15 A. I learned we were going to do a search
16 warrant on a residence.
17 Q. Okay. You don't normally involve 11 or 12
18 Powell police officers to serve a search warrant,
19 correct?
20 MR. THOMPSON: Objection as to form.
21 MS. WESTBY: Join.
22 THE WITNESS: It would depend on the warrant.
23 BY MR. GOSMAN:
24 Q. My question was you don't normally do it with
25 the entire Powell police force, correct?

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1 MS. WESTBY: Object to form. Asked and
2 answered. Just because you don't like his answer does
3 not mean it's not an answer.
4 MR. THOMPSON: Objection.
5 MR. GOSMAN: Thank you, counsel. Objections
6 as to form, please.
7 MS. WESTBY: I will make the objections that
8 I feel necessary.
9 Go ahead.
10 THE WITNESS: Depending on the warrant, how
11 many guys we use.
12 BY MR. GOSMAN:
13 Q. Okay. Have you ever been involved in another
14 warrant service prior to February 24, 2009 that
15 involved nearly the entire Powell Police Department?
16 A. I've been in warrant services that involved
17 multiple officers from different agencies.
18 Q. Since you've been with the Powell Police
19 Department?
20 A. Yes.
21 Q. And that would be serving warrants, say, for
22 DCI or Park County or something like that?
23 A. Yes.
24 Q. And were those high risk warrant services, do
25 you know?

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1 A. No.
2 Q. So you didn't have any idea that they were
3 planning a dynamic entry that night?
4 MR. THOMPSON: Objection as to form.
5 MS. WESTBY: Join.
6 THE WITNESS: Would you say it again? I'm
7 sorry.
8 BY MR. GOSMAN:
9 Q. Yeah, did you have any idea they were
10 planning a dynamic entry that night?
11 MR. THOMPSON: Same objection.
12 MS. WESTBY: Join.
13 THE WITNESS: No.
14 BY MR. GOSMAN:
15 Q. You didn't know they were going to deploy a
16 flashbang device?
17 A. I knew it was a possibility.
18 Q. All right. So I think what you're trying to
19 say is you were going to try to serve the warrant, and
20 if nobody came to the door or it was barricaded or
21 somebody started shooting, then they would be prepared
22 for an entry into the house; is that correct?
23 MS. WESTBY: Object to the form.
24 MR. THOMPSON: Join.
25 THE WITNESS: Can you ask or read --

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1 BY MR. GOSMAN:
2 Q. Put it in your own words, Officer. What was
3 your understanding of what you were doing that night
4 and why you had a team assembled?
5 MR. THOMPSON: Objection as to form. Asked
6 and answered.
7 MS. WESTBY: Join.
8 THE WITNESS: We were going to the residence
9 to serve a search warrant, and if needed, we were going
10 to make entry into the house.
11 BY MR. GOSMAN:
12 Q. What does if needed mean?
13 A. For safety of us, the occupants of the
14 residence.
15 Q. For the safety of the occupants of the
16 residence?
17 A. Yes.
18 Q. Okay. What occupants specifically are you
19 talking about?
20 A. Whoever happened to be in the residence at
21 the time.
22 Q. Did you hear that there were other occupants
23 in the residence at that time?
24 A. No.
25 Q. Did you hear anything about questions

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1 concerning officer safety?
2 MS. WESTBY: Object to the form.
3 THE WITNESS: Say that again.
4 BY MR. GOSMAN:
5 Q. Did you hear anything concerning officer
6 safety at that meeting?
7 A. Yes.
8 Q. What did you hear?
9 A. I heard that there was multiple guns in the
10 house and that the people who lived there, the
11 residents, were paranoid, looked out the window a lot.
12 Q. Okay. Did you see Officer Eckerdt that
13 night, Sergeant Eckerdt?
14 A. I know he was present, yes.
15 Q. Did you hear him talk about some photos that
16 he'd seen of Bret Wachsmuth?
17 A. Yes.
18 Q. Do you know what got that going? How it came
19 that he shared that information?
20 A. I don't know.
21 Q. What did he say, if you remember? What do
22 you remember about what he said?
23 A. I don't remember the specifics. I remember
24 talking about photos of Bret in a tactical vest with
25 rifles.

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1 Q. An assault rifle?
2 A. Yes.
3 Q. Did you get the impression that he had
4 actually seen these photographs?
5 A. I don't know.
6 Q. Was there any mention of Tom Wachsmuth that
7 night?
8 A. I don't know.
9 Q. Were you aware that an entry team with long
10 rifles would be standing at the door when the
11 knock-and-announce was made?
12 A. Yes.
13 Q. And were you aware that there was a ram that
14 was next to the officer that was knocking and
15 announcing?
16 A. I don't know where the ram was. I was aware
17 there was one.
18 Q. How long were you at the police department
19 that night?
20 A. I don't know for sure.
21 Q. And who did you leave the police department
22 with to go to the scene?
23 A. I left with Investigator Brown.
24 Q. And what did you do when you arrived at the
25 scene?

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1 A. I jumped over the back fence and covered the
2 back door.
3 Q. When you use the word cover, what do you mean
4 by that?
5 A. I had a rifle with me, and I made sure nobody
6 came out the back door.
7 Q. Were you pointing it at the back door?
8 A. Yes.
9 Q. What does the word cover position mean to
10 you, based on your training?
11 A. To make sure that - I guess I don't
12 understand.
13 Q. What does cover position mean? Have you
14 heard the term cover position?
15 A. Yes.
16 Q. What does it mean?
17 A. You're there in the ready in case you need to
18 use it.
19 Q. Rifles up?
20 A. Depending on the situation, yes.
21 Q. All right. Does cover position include a
22 position with the rifle down, to point the barrel of
23 the rifle down?
24 A. If you had another person in front of you,
25 yes.

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1 Q. What if you didn't?
2 A. Then I would have my rifle up.
3 Q. Have you been taught that that's the
4 appropriate way to clear a room?
5 A. I guess I don't understand.
6 Q. When you -- have you ever been involved in
7 room clearing exercises?
8 A. Yes.
9 Q. And when you enter a room in a room clearing
10 exercise, do you have your rifle in the cover position?
11 A. Depends on which position you enter the room
12 in.
13 Q. Right. If you're first in the room, is that
14 rifle in the cover position?
15 A. Yes.
16 Q. And when you enter the room and you have
17 another officer ahead of you, do you bring your rifle
18 to the cover position and sweep another portion of the
19 room?
20 MS. WESTBY: Object to the form of the
21 question. Incomplete hypothetical.
22 MR. THOMPSON: Join.
23 THE WITNESS: I guess I don't understand.
24 BY MR. GOSMAN:
25 Q. Well, if you were the second man in a room

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1 and you were clearing that room, and the officer ahead
2 of you had his rifle in the cover position and you
3 entered the room behind him, would you bring your rifle
4 to the cover position and clear another portion of the
5 room?
6 MS. WESTBY: Same objection, incomplete
7 hypothetical.
8 MR. THOMPSON: Join.
9 THE WITNESS: Depending on the situation.
10 BY MR. GOSMAN:
11 Q. All right. So you scaled the fence, and you
12 covered the back door, correct?
13 A. Yes.
14 Q. And did you hear a dog bark in the house
15 before? Let me ask this question: Where were you when
16 the flashbang device went off?
17 A. Just about the top of the fence.
18 Q. And did you hear the door being rammed?
19 A. No, I didn't.
20 Q. You didn't see any of the officers in the
21 front of the house?
22 A. No.
23 Q. Did you go in the house?
24 A. After everything was done, somebody opened
25 the back door, and I walked through the house. In the

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1 back door, out the front door.
2 Q. Did you see Tricia Wachsmuth in the house?
3 A. No.
4 Q. Did you see her at all?
5 A. I transported her to the police department.
6 Q. Where was she when you first saw her?
7 A. In the back of the patrol car.
8 Q. Did she say anything on the way to the police
9 station?
10 A. No.
11 Q. Did you say anything to her?
12 A. No.
13 Q. Was she cooperative?
14 A. Yes.
15 Q. Who were you with in the backyard?
16 A. Investigator Brown, Officer Lara.
17 Q. What was Brown doing at the time that you
18 scaled the fence?
19 A. I'm not sure.
20 Q. Was he assigned to cover the back door with
21 you?
22 A. Yes.
23 Q. In fact, you guys were assigned to break out
24 a window initially, weren't you?
25 A. Yes.

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1 Q. That didn't make sense, though, after the
2 flashbang went off and you were still at the fence,
3 correct?
4 A. Yes.
5 Q. So you didn't break a window?
6 A. No.
7 Q. Was Officer Lara assigned to participate with
8 you as a group in providing a second diversion in the
9 back of the home?
10 A. I don't know.
11 Q. Was Officer Brown assigned that with you?
12 A. I don't know.
13 Q. You were specifically assigned that?
14 A. Yes.
15 Q. You went to the site and you didn't know who
16 the -- what Officer Brown's role was going to be?
17 A. I knew he was going to be in the backyard
18 with me.
19 Q. Did you know that Officer Lara was going to
20 be in the backyard with you?
21 A. I knew he was -- that's where he was assigned
22 to, yes.
23 Q. Did you see Officer Lara in the backyard
24 after you scaled the fence?
25 A. No.

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1 Q. Which officer was it that had trouble getting
2 over the fence?
3 A. I think all of us did.
4 Q. Okay. After you transported Tricia Wachsmuth
5 to the police department, what did you do?
6 A. I believe I removed her handcuffs. I don't
7 know if I did or not. And then they took her in to
8 interview.
9 Q. And what did you do after that?
10 A. I sat in Investigator Brown's office while he
11 interviewed her.
12 Q. Did you hear Officer Brown yelling at Tricia
13 Wachsmuth?
14 A. No.
15 Q. Is it something that you may have just
16 forgotten?
17 A. No.
18 Q. What do you remember about that interview?
19 A. I remember it was very short. And she said
20 she wanted to talk to her husband before she talked to
21 us.
22 Q. You don't remember Officer Brown slamming his
23 fist on the table and saying you will tell us where
24 your husband is?
25 A. No.

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1 Q. Anything like that? You don't remember
2 anything like that?
3 A. No.
4 Q. Was anyone else present?
5 A. No.
6 Q. Have you been with Officer Brown in other
7 interviews?
8 A. Yes.
9 Q. Has he ever displayed that type of behavior?
10 A. No.
11 MR. THOMPSON: Objection as to form.
12 BY MR. GOSMAN:
13 Q. Have you?
14 A. No.
15 Q. Would you agree with me that that type of
16 behavior would be not only unprofessional, but that it
17 might violate the constitutional rights --
18 MR. THOMPSON: Objection as to form.
19 MS. WESTBY: Object to the form of the
20 question, and you're not going to ask him those kind of
21 questions.
22 BY MR. GOSMAN:
23 Q. All right. That's the fourth time you've
24 directed a witness not to answer.
25 MS. WESTBY: Well, I'm not going to -- I'm

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1 not going to allow you to ask him --
2 MR. GOSMAN: We don't need to know why you're
3 not going to allow me to do anything. You've already
4 stated that you're not going to --
5 MS. WESTBY: -- to turn him into an expert.
6 MR. GOSMAN: You've already listed him as an
7 expert, for crying out loud.
8 All right. I don't have any further
9 questions. Well, I do. Let me just ask a couple other
10 things.
11 BY MR. GOSMAN:
12 Q. Were you involved in the debriefing that
13 occurred after the warrant service?
14 A. Yes.
15 Q. Who was there?
16 A. I can't say for sure, but I believe everybody
17 that was involved was there.
18 Q. All right. It seemed like it was a fairly
19 large group?
20 A. Yes.
21 MS. WESTBY: Object to the form of the
22 question.
23 BY MR. GOSMAN:
24 Q. Do you know if Chief Feathers was there?
25 A. I don't believe he was.

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1 Q. What was discussed at that debriefing?
2 A. I don't remember.
3 Q. Do you remember Sergeant Chretien apologizing
4 to the officers for taking Tricia Wachsmuth down the
5 stairs first?
6 MS. WESTBY: Object to the form of the
7 question, misstates the testimony.
8 MR. THOMPSON: Join.
9 MS. WESTBY: Go ahead.
10 THE WITNESS: No, I don't.
11 BY MR. GOSMAN:
12 Q. Did you ever hear Officer Chretien apologize
13 for that?
14 MS. WESTBY: Object to form.
15 THE WITNESS: No.
16 BY MR. GOSMAN:
17 Q. Have you had any communication -- do you know
18 Tom Wachsmuth?
19 A. Yes, I do.
20 Q. All right. Have you had any communication
21 with Tom Wachsmuth about this case?
22 A. No.
23 Q. You don't remember Tom Wachsmuth's name
24 coming up at all in the meeting that you had with the
25 officers that evening before you assembled at the

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1 Wachsmuth home?
2 MR. THOMPSON: Objection as to form.
3 MS. WESTBY: Join.
4 THE WITNESS: No, I don't remember.
5 MR. GOSMAN: No further questions. Thank you
6 very much.
7 MS. WESTBY: We'll read and sign.
8 (Proceedings concluded at
9 12:14 p.m., November 23,
10 2010.)
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Direct Examination by Mr. Gosman

DEPONENT'S CERTIFICATE

1
2 I, CODY BRADLEY, do hereby certify, under
3 penalty of perjury, that I have read the foregoing
4 transcript of my testimony consisting of 32 pages,
5 taken on November 23, 2010 and that the same is, with
6 any changes noted below, a full, true and correct
7 record of my deposition.

8 PAGE LINE CORRECTION REASON FOR CORRECTION

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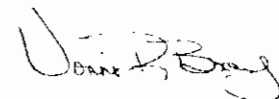
CERTIFICATE

1
2 I, VONNI R. BRAY, Registered Professional
3 Reporter, and Notary Public for the State of Montana,
4 do hereby certify that CODY BRADLEY was by me first
5 duly sworn to testify to the truth, the whole truth,
6 and nothing but the truth;

7 That the foregoing transcript, consisting of
8 33 pages, is a true record of the testimony given by
9 said deponent, together with all other proceedings
10 herein contained.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand this 11th day of December, 2010.

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21



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Appendix Nineteen

In The Matter Of:
Tricia Wachsmuth v.
City of Powel, et al.

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October 4, 2010

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF WYOMING
3 -----
4 TRICIA WACHSMUTH,)
5 Plaintiff,)
6 vs.) NO. 10-CV-041J
7)
8 CITY OF POWELL, AND IN THEIR)
9 INDIVIDUAL CAPACITY, TIM)
10 FEATHERS, CHAD MINER, MIKE)
11 CHRETIEN, ROY ECKERDT, DAVE)
12 BROWN, MIKE HALL, BRETT LARA,)
13 MATT MCCASLIN, ALAN KENT, MATT)
14 DANZER, OFFICER BRILAKIS, LEE)
15 BLACKMORE, CODY BRADLEY, KIRK)
16 CHAPMAN, JOHN DOES #1-#4,)
17 Defendants.)
18
19 DEPOSITION OF MATTHEW DANZER
20 3:28 p.m., Monday, October 4, 2010
21
22 Pursuant to notice, the deposition of MATTHEW
23 DANZER was taken in behalf of Plaintiff in accordance
24 with the applicable Federal Rules of Civil Procedure at
25 the Park County Circuit Court Jury Room, 109 W. 14th
St., Powell, WY 82435, before Vonni R. Bray, Registered
Professional Reporter and Notary Public of the State of
Montana.

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1 MR. GOSMAN: Before we go on the record this
2 afternoon, there are a couple of things that I think we
3 need to set out in the record.
4 First, we are giving depositions this
5 afternoon based on a schedule that has apparently been
6 made necessary because counsel for the defendant, in
7 part at least, has not yet interviewed their clients
8 for their depositions. And so we are limited to those
9 that are available who have been interviewed by their
10 counsel.
11 And counsel for plaintiff has agreed to
12 accommodate this issue. And we have established a
13 schedule by which we will go forward today.
14 I have been asked to --
15 MS. WESTBY: In that regard, before we go on
16 to the next issue, I think it also needs to be clear on
17 the record that counsel stated in writing as of 9/13,
18 that he did not have a schedule for the defendants
19 that, in conversations, told both defense counsel that
20 he wanted to depose Chief Feathers first. Chief
21 Feathers is ready to be deposed, has gone through
22 everything, is ready to be deposed. Counsel changed
23 his mind when we got here to the depositions. And we
24 were following the schedule that we were told we could
25 use.

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1 Go ahead.
2 MR. GOSMAN: Counsel did not change his mind.
3 I want to be on the record with that comment.
4 But the other thing is with regard to the
5 capacity of the officers in this lawsuit, Chief
6 Feathers, I believe it's Sergeant Chretien, Michael
7 Chretien, in any event, are being sued in their
8 individual and their official capacity, too. And the
9 other officers are being sued in their individual
10 capacity.
11 MR. THOMPSON: Thank you, counsel.
12 MR. GOSMAN: Yes.
13 MS. WESTBY: And that -- your pleadings do
14 not reflect that.
15 MR. GOSMAN: Okay
16 MS. WESTBY: So we're -- you know, we're
17 going to need to handle that in some way.
18 MR. THOMPSON: And I think for purposes of
19 making a clear record of that representation, what I'd
20 like to do with your stipulation is upon completion of
21 the depositions this week, enter into a stipulation to
22 that effect and file it with the Court.
23 MR. GOSMAN: That's fine.
24 All right. Make sure there isn't anything
25 else that we need to address here before we start.

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Direct Examination by Mr. Gosman

1 MATTHEW DANZER,
2 having been first duly sworn, testified as follows:
3 DIRECT EXAMINATION
4 BY MR. GOSMAN:
5 Q. Mr. Danzer, what is your full name, please?
6 A. Matthew Allen Danzer.
7 Q. Okay. And have you ever been given a
8 deposition before?
9 A. No.
10 Q. And do you understand how a deposition takes
11 place?
12 A. I believe so.
13 Q. You sat through the deposition of Tricia
14 Wachsmuth this morning?
15 A. Yes.
16 Q. Heard the format?
17 A. Yes.
18 Q. Okay. I will ask you questions today, and
19 you will be required to answer them truthfully unless
20 you're instructed by your counsel not to answer the
21 questions, do you understand that?
22 A. Yes.
23 Q. The answers that you give today will be
24 recorded and can be used against you at trial, do you
25 understand that?

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1 A. Yes.
2 Q. It is important for you to ask for
3 clarification if you don't understand a question, okay?
4 A. (Witness nods head.)
5 Q. If you don't ask for clarification, I will
6 assume that you understood the question and that the
7 answer you gave was in response to the question that is
8 on the record.
9 So there is an opportunity there for
10 confusion unless you clear it up at the time, do you
11 understand that?
12 A. Yes.
13 Q. Please allow me to finish my question before
14 you begin your answer. You probably saw earlier today
15 that that can create some problems?
16 A. Yes.
17 Q. If you wish to take a break at any time, we
18 will do so. But not while a question is pending.
19 In other words, if there are any pending
20 questions, you'll be required to answer them before
21 going on a break, do you understand that?
22 A. Yes.
23 MR. GOSMAN: Can we have the radio turned
24 off?
25 SERGEANT CHRETIEN: I'm on duty.

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Direct Examination by Mr. Gosman

1 MR. GOSMAN: Okay.
2 SERGEANT CHRETIEN: I got it as low as I --
3 actually, I can call her -- I'm Sergeant Chretien.
4 MR. GOSMAN: Sergeant Chretien. Okay. Very
5 good.
6 SERGEANT CHRETIEN: I can call her and tell
7 her to call me on my cell phone if she needs me, or I
8 can sit outside the door.
9 MR. GOSMAN: Okay. Thank you very much.
10 Appreciate that.
11 MS. WESTBY: Not even outside the door, but
12 maybe just --
13 BY MR. GOSMAN:
14 Q. Okay. Officer Danzer, what is your current
15 address?
16 A. 615 South 16th Avenue, Bozeman, Montana.
17 That's where I work.
18 Q. And with whom do you work currently?
19 A. Bozeman Police Department.
20 Q. When did you leave the Powell Police
21 Department?
22 A. The beginning of September.
23 Q. And just tell me briefly why you left and
24 what took you to Bozeman.
25 A. I just recently got married. And my wife and

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1 I -- she's from Bozeman. So we're moving to her place.
2 Q. And what is your rank with the Bozeman Police
3 Department?
4 A. A basic police officer. I'm on probationary
5 status right now because I just got hired on. So
6 probationary police officer.
7 Q. And what was your rank with the Powell Police
8 Department when you left?
9 A. I was a police officer, too.
10 Q. Who was in your chain of command?
11 A. Above me were sergeants. And then the chief.
12 Q. Okay. Sergeants who?
13 A. Sergeant Chretien, Sergeant Kent, and
14 Sergeant Eckerdt.
15 Q. Did you work in investigations?
16 A. Not specifically.
17 Q. You were a patrol officer?
18 A. Yes.
19 Q. And are you currently on any medication that
20 would impair your ability to give truthful answers here
21 today?
22 A. No.
23 Q. Do you have any medical problems or illnesses
24 that might interfere with your ability to give truthful
25 answers today?

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1 A. No.
2 Q. Have you ever been arrested for a crime,
3 other than a traffic violation?
4 A. No.
5 Q. Ever been arrested for a crime involving
6 dishonesty?
7 A. No.
8 Q. You're married now?
9 A. Yes.
10 Q. Were you married in February of 2009?
11 A. No.
12 Q. Does your family live here?
13 A. No.
14 Q. Have you ever been divorced?
15 A. No.
16 Q. Have you ever had a restraining order placed
17 against you?
18 A. No.
19 Q. Have you ever been sued in civil court?
20 A. No.
21 Q. Let's start with your educational background,
22 Officer Danzer. Could you go ahead and start with high
23 school and tell me about your education?
24 A. I attended a home school program. I was
25 taught by my parents.

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1 Q. And that was where?
2 A. In Lewistown, Montana.
3 Q. Lewistown. Okay. All right. Go ahead.
4 A. And I graduated from that. And then I
5 attended the Pensacola Christian College.
6 Q. Okay.
7 A. And I graduated from there with a bachelor's
8 degree.
9 Q. In what field?
10 A. Criminal justice.
11 Q. And what year was that?
12 A. That was 2004.
13 Q. Describe your work history from -- well,
14 let's go back to high school, if you worked in high
15 school, and just tell me a little bit about your work
16 history.
17 A. In high school, I worked at a drive-up coffee
18 kiosk, served gourmet coffee.
19 Q. How long?
20 A. I'm not exactly sure. I believe it was
21 sometime -- I started sometime in my junior year and
22 worked there until I went off to college. But I'm not
23 sure.
24 Q. In college, where did you work?
25 A. I worked -- part of the time, I worked in --

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1 as a -- at the bookstore -- at the academy bookstore
2 for, I guess it would be -- they had an academy, which
3 is for high school, home high school. And I worked
4 there as part of the college program, though. And then
5 I worked as a floor leader. And then as an RA. And --
6 yeah.
7 Q. Okay. Have you done any -- did you do any
8 police work while you were in school? Work with police
9 officers in any kind of training programs or ride along
10 programs?
11 A. I rode with my dad. He was a police officer
12 a couple times.
13 Q. And that's in Lewistown?
14 A. Yes.
15 Q. Police officer in Lewistown?
16 A. Yes.
17 Q. All right. How long have you worked -- let's
18 see, you graduated from college in what year?
19 A. 2004.
20 Q. And your work history from there?
21 A. I -- I mean, I've had different jobs off and
22 on through college.
23 Q. Let's go ahead and move forward beyond
24 college.
25 A. Beyond college?

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1 Q. Yes.
2 A. Not long after I graduated from college, I
3 was hired on with Powell Police Department.
4 Q. In other words, within a few months?
5 A. I graduated in May, and I got hired at the
6 beginning of July. So as long as it took me to apply.
7 Q. And did you receive any increase in grade
8 during the period that you worked for the Powell Police
9 Department?
10 A. Yes.
11 Q. Okay. Explain that.
12 A. At different points, time, you were subject
13 to merit increases or step raises, depending on the
14 years you worked, the positions you've held, that kind
15 of thing. So I've got raises based on those schedules.
16 Q. Did you -- were you ever bypassed for a merit
17 raise for a scheduled promotion or raise?
18 In other words, if the city gave a merit
19 raise annually, were you ever bypassed for the merit
20 raise in a year?
21 A. This July, the city did not have funding to
22 give anybody raises. So I did not get a raise.
23 Q. No one at the Powell Police Department got a
24 raise this year?
25 A. As far as I know, no.

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1 Q. As far as you know.
2 All right. As a law enforcement officer, you
3 have certain training requirements, correct?
4 A. Yes.
5 Q. And you've been a law enforcement officer for
6 about five years; is that roughly the case?
7 A. Just over six years.
8 Q. Just over six years. Okay. And are there
9 annual education requirements that are set by law in
10 Wyoming for peace officers?
11 A. Yes.
12 Q. How many hours are they? How many hours per
13 year are you required to take?
14 A. I'm not sure. I'm not sure if it's per year
15 or if it's every couple or three years.
16 Q. Okay. Have you maintained those standards?
17 A. Yes.
18 Q. Have you ever had any claims filed against
19 you at the Powell Police Department, either with
20 internal affairs or any other means by which you would
21 have been made aware of them?
22 A. What kind of claims?
23 Q. Claims. Claims for excessive force, claims
24 for mishandling of a official police matter.
25 MS. WESTBY: That's two different questions.

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Direct Examination by Mr. Gosman

1 BY MR. GOSMAN:
2 Q. Well, I'm talking about claims generally.
3 Under the general rubric of claims that would be filed
4 against you, whether it involves misconduct or
5 mishandling of, you know, official case or anything.
6 MR. THOMPSON: Objection.
7 MS. WESTBY: Yeah, it's too broad. And we're
8 not -- I mean, you need to specify what it is that
9 you're asking for.
10 BY MR. GOSMAN:
11 Q. Have you ever had any claims filed against
12 you with Internal Affairs?
13 MS. WESTBY: As to --
14 BY MR. GOSMAN:
15 Q. While you were at Powell Police Department.
16 MS. WESTBY: -- something that relates to
17 this case?
18 MR. GOSMAN: No.
19 MS. WESTBY: You know, we're -- I'm not going
20 to let you get into general, you know, completely
21 unrelated issues.
22 If you want to ask if there's anything having
23 to do with excessive force, with, you know, execution
24 of a search warrant. If you want to ask something
25 related to this case, go ahead and ask. But I'm not --

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1 I'm not just going to let this be a free-for-all about
2 what's in there. If you want to ask about --
3 MR. GOSMAN: I heard you the first time. I
4 believe that the protective order indicated that I was
5 entitled to the personnel file, including any claims
6 filed against the officers. I don't have a single one.
7 I want to find out --
8 MS. WESTBY: No. Actually, the protective
9 order talked about the -- talked about the internal
10 investigation issues, did not require us to produce
11 those. Ordered us to produce the personnel file, the
12 discipline matters, disciplinary issues.
13 MR. THOMPSON: Promotion, demotion.
14 MS. WESTBY: And what else? What was the
15 other?
16 MR. GOSMAN: Seems to me this is a
17 disciplinary. When you get a complaint against you --
18 MS. WESTBY: Then you are more than welcome
19 to ask him about disciplinary matters in his personnel
20 file.
21 BY MR. GOSMAN:
22 Q. Have you ever been under any kind of
23 investigation for a disciplinary matter?
24 MS. WESTBY: You're using investigation --
25 disciplinary matter, I'm assuming we're not talking

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1 about Internal Affairs investigations. You're talking
2 about disciplinary matters that are in his personnel
3 file, correct?
4 MR. GOSMAN: No, I'm not limiting it to his
5 personnel file. I want to know what's gone on in this
6 officer's career. What claims have been filed against
7 him, what disciplinary issues filed against him.
8 There's nothing in any of the personnel files.
9 MS. WESTBY: And we've sought a protective --
10 there's a protective order out there that specifically
11 allows you these three things out of their personnel
12 file. If you want to ask about his disciplinary issues
13 and his personnel file, then go ahead and do it. The
14 Court did not order us to turn over the Internal
15 Affairs investigations.
16 MR. GOSMAN: All right. We're going to have
17 to go off the record. I'm going to have to look at the
18 order.
19 THE COURT REPORTER: So are we off the
20 record?
21 MR. GOSMAN: Yes, we are.
22 (Discussion held off the
23 record.)
24 (Recess taken to call
25 Magistrate Beaman.)

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1 THE COURT: What I'll allow you to ask is:
2 Mr. Deponent or Ms. Deponent, have you ever received
3 any kind of disciplinary action during the last five
4 years which is not reflected in your personnel records?
5 MR. GOSMAN: That includes verbal reprimands
6 and discipline as well?
7 THE COURT: Correct.
8 MR. GOSMAN: Okay. Very good. Thank you,
9 Your Honor.
10 (Brief recess taken to
11 reassemble in jury room.)
12 THE COURT REPORTER: You want me to read
13 this?
14 MR. GOSMAN: I do.
15 (The record was read as
16 requested.)
17 THE WITNESS: No.
18 BY MR. GOSMAN:
19 Q. All that for nothing. Maybe tomorrow. You
20 know, who knows? All right.
21 (Exhibit 31 identified)
22 BY MR. GOSMAN:
23 Q. Okay. Let's go ahead and take a look at
24 Exhibit 31, if we could for a moment, officer Danzer.
25 And those are training records. It's actually quite a

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1 collection there. And let's see where Officer Danzer
2 is. Yes, you're at the very tail end. The very last
3 page of Exhibit 31.
4 MS. WESTBY: What are the numbers?
5 THE WITNESS: Oh, here we are.
6 BY MR. GOSMAN:
7 Q. Got it?
8 A. Yes.
9 MR. GOSMAN: And for the record, the Bates
10 Number is 612.
11 BY MR. GOSMAN:
12 Q. First of all, why don't you take a second and
13 describe what these records reflect or what they are.
14 A. It says Wyoming P.O.S.T. Training Records.
15 Q. And is this all of the training that you have
16 received as a law enforcement officer?
17 A. This is the P-O-S-T approved training that I
18 have received.
19 Q. All right. So what other -- you have
20 in-service training, I assume, and you have other kinds
21 of training that don't -- aren't P.O.S.T. approved?
22 A. Yes.
23 Q. Tell me about -- let's go ahead and talk
24 about those different kinds of training, other than
25 what's reflected in your past records or record?

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1 A. There's -- can be a lot of different things.
2 Example could be firearms training, qualifications.
3 Q. All right. Now, let me stop you there, sir
4 and ask you this question: When you undertake firearms
5 training, for instance, is it done in an in-service
6 setting where there's a log kept of those who attended,
7 the name of the instructor and the time and date that
8 the training occurred, that kind of information?
9 A. I am not the person in charge of that. So I
10 can only guess to that answer.
11 Q. All right. That's fine. I want you to take
12 another minute, then, and review this document of
13 your -- that contains your P.O.S.T. training. And let
14 me know what other kinds of training that you have
15 received as a law enforcement officer not reflected in
16 that official record?
17 A. To clarify the question, are you talking
18 about P.O.S.T. approved?
19 Q. No, if it were P.O.S.T. approved, I assume it
20 would be in the document that you were looking at?
21 A. Yes, that's all that is.
22 Q. Yes. So what other kinds of training have
23 you received?
24 A. Firearms training.
25 Q. Firearms training, okay. That's a category,

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1 and it's fine to go ahead and sort of generalize the
2 categories of training you received outside of your
3 P.O.S.T. formal coursework. You've named one.
4 Firearms.
5 A. Yes.
6 Q. Go ahead.
7 A. Field training initially when I got hired.
8 Q. When you talk about field training, you're
9 talking about general patrol work?
10 A. The -- initially, what I was trained as an
11 officer here, I went through a field training program.
12 Q. All right. Anything else?
13 A. We have done Friday Trainings, what we call
14 "Friday Training."
15 Q. Do you know if that's in-service training?
16 A. Within our department.
17 Q. Is it called in-service training?
18 A. I'm not sure if we ever labeled it, other
19 than Friday Training.
20 Q. It took place on Fridays, correct?
21 A. Most often. That was the common day we
22 conducted training.
23 Q. And you don't remember whether there was a
24 log or a book where you signed in or where any evidence
25 of the attendance was taken?

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1 A. When I was in charge of it, I wrote down who
2 was in attendance.
3 Q. Okay. What did you do with that information?
4 A. I turned it over to another officer who was
5 in charge of the Friday Trainings.
6 Q. Okay. And what Friday Trainings were you in
7 charge of?
8 A. What I can remember, it's mainly when we were
9 covering policies.
10 Q. Okay. So it would have been a review of
11 policies and procedures of the Powell Police
12 Department?
13 A. Yes.
14 (Exhibit 35 identified)
15 BY MR. GOSMAN:
16 Q. Why don't you go ahead and turn to
17 Exhibit 36. And 36 isn't marked because I ran out of
18 tabs. Okay. We're going to call it 35. I appear to
19 have misnumbered it.
20 Okay. That document is entitled -- it's
21 stamped Exhibit 36, is it not, and it's entitled
22 "Friday Trainings," or is it 35?
23 A. Says 35 up in the corner.
24 Q. Okay. We'll use that number, 35. Could you
25 identify that document for me?

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1 A. It says "Powell Police Department 4th Quarter
2 2005, Patrol Friday Training."
3 Q. Okay. Is that the Friday Training that you
4 referred to? Does that document reflect the type of
5 training that took place on Fridays?
6 A. It appears so.
7 Q. And I just want you to check, go through the
8 document, see if your name is there and let me know if
9 that in-service record is complete based on whether or
10 not your name appears in any of the training. And the
11 exhibit is about six pages long.
12 A. Oh, so you want me to look through it?
13 Q. Yes.
14 MS. WESTBY: This is also labeled 35, these
15 e-mails. Do you want him -- are these e-mails part of
16 it as well?
17 MR. GOSMAN: That's a misnumber. I'll have
18 to take care of that.
19 Yeah, just the Friday night trainings.
20 MR. THOMPSON: Are there Bates numbers we can
21 refer to so the record is clean?
22 MR. GOSMAN: Well, the record is clean
23 because the Exhibit is 35. And I'll change the other
24 exhibit, which hadn't been offered yet.
25 THE WITNESS: I've reviewed it.

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Direct Examination by Mr. Gosman

1 BY MR. GOSMAN:
2 Q. Okay. And first, let's back up for just a
3 second. Do you remember actually participating in
4 these Friday night trainings as an instructor?
5 A. In some of them.
6 Q. Okay. And are any of those training sessions
7 reflected in the record I've shown you in Exhibit 36 --
8 35? I'm sorry.
9 A. That I was an instructor, is that your
10 question?
11 Q. Or that the training occurred. I don't care
12 if it lists you as an instructor, just whether or not
13 the training occurred?
14 A. It looks like these are lists of training
15 that took place. That's what it appears to be records
16 of.
17 Q. And as far as you know, were there any Friday
18 night trainings that took place that aren't reflected
19 in those records? And I realize this is covering a
20 fairly long period of time. So your answer doesn't
21 have to be 100 percent accurate. But is there anything
22 that should have been in there that has taken place in
23 an in-service setting that's not in those records?
24 A. Not that I can think of.
25 Q. Officer, do you have any training in the area

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1 of dynamic entry?
2 A. Define dynamic entry.
3 Q. Dynamic entry is an entry that is
4 accomplished with an element of surprise using a team
5 of law enforcement officers, a superior show of force,
6 and it involves quick entry into a premises, oftentimes
7 through barricaded premises. And it's dynamic in the
8 sense it involves a tactical team of police officers.
9 MS. WESTBY: I'm going to have to object as
10 to form.
11 Go ahead and answer if you can.
12 THE WITNESS: Parts of those things, I'm not
13 sure that it necessarily would be all-inclusive every
14 time. But, we trained in building and room entry.
15 Those kinds of things.
16 BY MR. GOSMAN:
17 Q. Okay. When you say we trained in those
18 settings, who is we? Let's start there.
19 A. The officers of the Powell Police Department.
20 Q. And so what would you do?
21 A. And also any other agency that might have
22 been participating with us, whether the sheriff's
23 department --
24 Q. Were there times when the sheriff's
25 department participated with the Powell Police

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1 Department in practices involving dynamic entry teams?
2 A. Yes.
3 Q. Okay. And do you have any idea how many
4 times that has occurred in the last five years, or
5 since you've been a police officer with the Powell
6 Police Department?
7 A. A couple times that I can think of.
8 Q. Okay. Twice? All right.
9 A. At least twice.
10 Q. All right. Who all was involved in those
11 training sessions?
12 A. Members of the Powell Police Department and
13 some of the members of the Park County Sheriff's
14 Office, and possibly officers with the Cody Police
15 Department.
16 Q. List the officers of the Powell Police
17 Department that were involved that you remember.
18 A. Chief Feathers, Officer Matt Brilakis.
19 Now, this isn't necessarily attended both
20 trainings I can think of. There's past training. I'm
21 trying to think of people who have been in past
22 training in these kinds of things. Not their number of
23 attendances they've made.
24 Q. Okay. Fine.
25 A. Officer Cody Bradley, Investigator Brown,

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1 Officer Brett Lara, Sergeant Chretien, officer Chad
2 Glick, Officer Lee Blackmore, Officer Chad Miner,
3 Sergeant Eckerdt, Officer Kevin Schmidt. Officer Paul
4 Sapp, Sergeant Kent, Sergeant -- Officer Matt McCaslin,
5 Officer Mike Hall, Officer Kirk Chapman.
6 Q. Is there anybody that didn't show up for
7 these things?
8 A. I'm sure it was mandatory.
9 Q. Okay. Was it documented anywhere?
10 MR. THOMPSON: Objection as to form.
11 Go ahead.
12 BY MR. GOSMAN:
13 Q. Was the training documented?
14 A. I didn't document. So if there was
15 documenting taking place, it wasn't me.
16 Q. Would it have been in-service type training?
17 A. Some of them -- a couple of instances I
18 believe were P.O.S.T. approved as well.
19 Q. Okay. Are they reflected on your P.O.S.T.
20 records? That's the last page of Exhibit 35.
21 A. Of 35?
22 Q. Yes. Whoops, we got two 35s unfortunately.
23 A. I think it was 31.
24 Q. I'm sorry. You're right. It is 31. Excuse
25 me.

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Direct Examination by Mr. Gosman

1 A. Yes.
2 Q. Okay. Where?
3 A. Patrol tactical response.
4 Q. Okay. Where was that held?
5 A. In Powell.
6 Q. And who was the instructor?
7 A. Doug Pechtel.
8 Q. And that was a 50-hour course?
9 A. Yes.
10 Q. And that involved joint exercises with the
11 Powell -- with Park County Sheriff's Department?
12 A. Yes.
13 Q. And was there anything else then on your
14 P.O.S.T. records?
15 A. Looks like there's a couple other.
16 Q. Okay. Go ahead.
17 A. Patrol response to active shooter.
18 Q. And what does that have to do with dynamic
19 entry or did it? I mean, did you actually study the
20 dynamic entry situation where multiple officers were
21 involved in the breach of a home in that course?
22 A. Not specifically as you described.
23 Q. Okay. What did that course involve?
24 A. An active shooter, someone who is in the
25 process of shooting people, responding to that threat.

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1 Q. Okay.
2 A. And wherever they are located at.
3 Q. Okay. And one of the primary principles of
4 that type of tactical training for a patrol officer is
5 the understanding that this is a first responder's
6 situation, and it is not intended as a substitute for a
7 trained SWAT team, isn't that true?
8 MS. WESTBY: Object to the form of the
9 question.
10 BY MR. GOSMAN:
11 Q. Do you know that?
12 A. It's designed for whoever is available is
13 going to go over there if somebody is shooting people.
14 Q. Exactly.
15 A. Whether they are SWAT trained or other.
16 Q. All right. And the last of the courses
17 there?
18 A. Immediate action for patrol.
19 Q. Okay. And isn't it also true that in the
20 literature, the coursework that's -- the literature
21 that's supplied with that course, that it's also made
22 clear that immediate action for patrol is not intended
23 as a substitute for a trained SWAT team?
24 MS. WESTBY: Again, object to form.
25 Go ahead.

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1 Q. And you understand that you're not trained as
2 a patrol officer to function in a SWAT setting?
3 MS. WESTBY: Object.
4 BY MR. GOSMAN:
5 Q. Special Weapons and Tactics team approach?
6 MS. WESTBY: Object to the form of the
7 question.
8 MR. THOMPSON: Join.
9 BY MR. GOSMAN:
10 Q. Isn't that true?
11 A. Not necessarily.
12 Q. So you feel you're fully capable to function
13 in a SWAT team?
14 MS. WESTBY: Object to the form of the
15 question.
16 THE WITNESS: No.
17 BY MR. GOSMAN:
18 Q. So what is the difference, then, officer?
19 Let's try to resolve this. Because I think what you've
20 told me is it's not necessarily the case that patrol
21 officers are not prepared to act in a SWAT setting as a
22 SWAT team.
23 And I want you to explain to me -- there are
24 circumstances, of course, where you may be forced to
25 function in such a setting. But you're not saying that

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1 THE WITNESS: I would have to look, I guess,
2 at the materials.
3 BY MR. GOSMAN:
4 Q. Okay.
5 A. I can't answer that question.
6 (Exhibit 28 identified)
7 BY MR. GOSMAN:
8 Q. Let's go ahead and take a look at -- let's
9 see -- Exhibit -- let's see. Let's look at Exhibit 28.
10 I believe those -- that is the Immediate Action for
11 Patrol handbook. It is issued by Countermeasures
12 Tactical Institute.
13 While you're looking, and I'll help you try
14 to find some of this stuff. But who was your
15 instructor for that class, do you remember?
16 A. Doug Pecht.
17 Q. Okay. Let's take a look at IA for Patrol
18 Fundamentals. And this is -- it's Page 6 of the
19 manual. And you'll see here under these fundamentals,
20 a bulleted list. The primary objective is to save
21 human lives, and patrol officers are combining
22 immediate resources to interdict and resolve
23 in-progress calls where there are no other options
24 readily available; do you see that?
25 A. Yes.

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1 you're trained as a Special Weapons and Tactical team
2 member in a SWAT setting, correct?
3 MS. WESTBY: Object to the form of the
4 question.
5 MR. THOMPSON: Join.
6 MS. WESTBY: Go ahead and answer if you can.
7 THE WITNESS: We don't have a title of that.
8 There's no team in the Powell Police Department that's
9 called Special Weapons and Tactics.
10 BY MR. GOSMAN:
11 Q. So the Powell Police Department does not have
12 a SWAT team, correct?
13 A. Correct.
14 Q. Okay. Does the Powell Police Department have
15 a special operations unit?
16 MS. WESTBY: Object to the form of the
17 question.
18 BY MR. GOSMAN:
19 Q. Or, did it while you were there?
20 A. Special operations unit, what do you mean by
21 a special operations unit?
22 Q. I mean a unit that is specifically designed
23 and trained to handle a dynamic entry, a tactical
24 response situations. When I say tactical response, I
25 mean situations involving police tactics as opposed to

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1 patrol-type interdiction.
2 MS. WESTBY: Object to the form of the
3 question.
4 MR. THOMPSON: Join.
5 THE WITNESS: We are trained to handle a lot
6 of different situations.
7 BY MR. GOSMAN:
8 Q. Okay. All right. How many dynamic entries
9 have you done, Officer McCaslin?
10 A. I'm not officer McCaslin.
11 Q. I'm sorry. You are Officer Danzer.
12 A. Again, that's a title that ...
13 Q. Okay. How many times have you assembled with
14 a team and broken down the door of a home and entered
15 the house with weapons, automatic weapons, and deployed
16 a flashbang device before February 24th of 2009?
17 A. I have never done those things that you have
18 described in a single instance.
19 Q. Do you feel like you needed to have some
20 training to do those things or you could just jump into
21 a situation like that and be fully functional?
22 MR. THOMPSON: Objection as to form.
23 MS. WESTBY: Join. Go ahead.
24 THE WITNESS: We were trained in different
25 elements involving those things.

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1 A. We were -- there was a house involved. There
2 was -- it was a response to somebody exiting the house
3 was one instance I used. And it might have been
4 another instance where we were trained in deploying.
5 In fact, we trained in -- when we entered
6 rooms deploying flashbangs.
7 Q. Okay. And how many flashbangs have you
8 deployed then? And I assume this is in connection with
9 your training with Countermeasures Tactical Institute,
10 correct?
11 A. Yes.
12 Q. All right. How many?
13 A. Are you talking -- I can think of at least
14 one instance where there was a live flashbang. And we
15 practiced using flashbangs pretty much throughout the
16 training. A lot of times, you could not deploy one
17 inside a building somebody was letting us use. So we
18 would have to throw a blank body of a flashbang. But
19 we trained in those deployments.
20 Q. All right. And this was all part of this
21 50-hour course that you took?
22 A. Those two courses.
23 Q. And the other one being, I'm sorry?
24 A. I'm not sure of the exact title. I can look
25 back.

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1 BY MR. GOSMAN:
2 Q. Okay. What were you specifically trained in?
3 A. I was trained in how to enter buildings.
4 Q. Were you trained to use a ram?
5 A. Yes.
6 MR. THOMPSON: Counsel, you're not letting
7 the witness answer the question.
8 BY MR. GOSMAN:
9 Q. Go ahead. I'm sorry. I do apologize for
10 that.
11 You were trained to enter buildings?
12 A. Yes.
13 Q. Okay. What else?
14 A. We were trained in how to clear rooms. We
15 were trained in flashbang deployment.
16 Q. Where did you receive that training?
17 A. With the two programs that Doug Pechtel put
18 on. He covered --
19 Q. He covered it in the materials?
20 A. Yes, he did.
21 Q. And did you deploy a flashbang in his course?
22 A. Yes, I did.
23 Q. And what did you do? Did you stand out in a
24 field and toss a flashbang? Was it in a house? What
25 was the setting?

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1 Q. Immediate Action for Patrol?
2 A. Yes.
3 Q. Okay. And you took that in 11 -- that would
4 have been November of 2009. So that was actually a few
5 months after the Wachsmuth warrant was served, correct?
6 A. The second one would have been after, that's
7 correct.
8 Q. Okay. So prior to February 24, 2009, your
9 entire experience with regard to flashbangs had been
10 limited to coursework you took in October of 2005 in a
11 course called "Patrol Tactical Response"; is that
12 correct?
13 A. Yes.
14 MS. WESTBY: Object to the form of the
15 question.
16 BY MR. GOSMAN:
17 Q. And did you have any occasion to use any of
18 that information and training that you acquired during
19 that training program in October of 2005 afterward,
20 prior to the 24th of February of 2009?
21 A. Yes.
22 Q. All right. Tell me about it, Officer. What
23 happened that resulted in you employing entry tactics
24 or room clearing tactics and so on.
25 A. Repeat the first question, then. I'm

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1 confused, I guess.

2 Q. Okay. Following your coursework in October

3 of 2005, did you ever have the opportunity to use that

4 expertise in any official police operation prior to the

5 24th of February 2009?

6 A. Yes.

7 Q. When? And tell me about it, I want to know

8 about those circumstances.

9 A. I can think of an instance when we responded

10 to someone who had fired a weapon in a trailer.

11 Q. Okay.

12 A. Who -- we had been told was suicidal. I

13 don't remember all the details. But we -- it was a

14 response that required a lot of officers and we

15 employed tactics that we learned at that course.

16 Q. Okay.

17 A. That was the main instance that sticks out in

18 my mind. If there are others, it's not jumping to me

19 right now.

20 Q. Okay. Did they all involve cases where

21 someone was considered armed and dangerous?

22 MS. WESTBY: Object to the form of the

23 question.

24 THE WITNESS: Again, I cannot think of every

25 instance. We never leave that potential out there that

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1 somebody is armed. So that --

2 BY MR. GOSMAN:

3 Q. Well, you don't always use a SWAT-type entry

4 to go into a residence either. So we understand that

5 people may be armed. But I'm talking about a response

6 that actually involved a tactical unit where these

7 tactics were employed.

8 And I'm asking you if in fact, they were

9 limited to situations where persons were armed and

10 considered dangerous, in your experience with the

11 Powell Police Department.

12 MS. WESTBY: Object to the form of the

13 question.

14 MR. THOMPSON: Join.

15 THE WITNESS: Again, there's no way of -- I

16 could remember every possible situation.

17 BY MR. GOSMAN:

18 Q. Well, I'm only asking you to remember those

19 that have to do with what I've called a dynamic entry,

20 where the door was broken down and officers stormed the

21 residence and flashbang devices were used and those

22 kinds of things.

23 MR. THOMPSON: Objection as to form. Asked

24 and answered.

25 MS. WESTBY: Join.

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1 THE WITNESS: In the way you put that, I

2 cannot think of an instance in that case.

3 BY MR. GOSMAN:

4 Q. All right. You mentioned a situation a

5 moment ago where an individual was -- was he barricaded

6 in his trailer house, this individual that -- where the

7 Powell Police Department was called upon to enter the

8 home?

9 A. He came outside. So ...

10 Q. So you didn't have to knock the door down?

11 A. No.

12 Q. You didn't have to enter the house and clear

13 the rooms?

14 A. No.

15 Q. All right. So when have you done that prior

16 to February 24th, 2009?

17 And by the way, I don't care if you haven't

18 done it. I just want you to be truthful with me and

19 we'll get on to the next question.

20 MS. WESTBY: Object to the form of the

21 question.

22 THE WITNESS: How you just posed it, I can't

23 think of a time where I have.

24 BY MR. GOSMAN:

25 Q. Okay. Have you ever been involved with the

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1 Powell Police Department in the detonation of a

2 flashbang in an official police operation?

3 MS. WESTBY: Object to the form of the

4 question.

5 BY MR. GOSMAN:

6 Q. Other than the one that occurred on the

7 24th of February 2009.

8 A. What do you mean by official police action?

9 Q. Well, I'm talking about serving a warrant.

10 taking care of a hostage situation, or some situation

11 that involved a dynamic entry that used a flashbang

12 device as a police officer?

13 A. Outside of training?

14 Q. Yes.

15 A. No.

16 Q. All right. And outside of the -- and I think

17 you've answered this question, and this is going to

18 happen from time to time.

19 But you've never used a flashbang other than

20 what you did, if you will, at the Countermeasures

21 Tactical Institute training in October of 2005?

22 MS. WESTBY: Object to the form of the

23 question.

24 THE WITNESS: Now, when I was telling you

25 about a training, I lumped those two together because

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1 they covered basically the same course, the material.
2 BY MR. GOSMAN:
3 Q. Right.
4 A. So my recollections of using the -- or of
5 deploying a flashbang, it happened in those two.
6 Q. Okay. That's the only time you've done it?
7 A. Correct.
8 Q. All right. So I had a question a minute ago,
9 and that was: Does the Powell Police Department have a
10 special operations unit, a unit that's specially
11 trained to conduct dynamic entry, as far as you know?
12 And I realize you're a patrol officer here. So ...
13 A. There's nothing with a title.
14 Q. All right. And does the Powell Police --
15 since October of 2005, when you got together for the
16 course, has the Powell Police Department, to your
17 knowledge, engaged in practice exercises involving a
18 tactical unit and performing dynamic entry where the
19 officers rush into the residence, a ram may or may not
20 be used, flashbang devices may or may not be used,
21 automatic weapons are generally involved?
22 MS. WESTBY: Object to the form of the
23 question.
24 BY MR. GOSMAN:
25 Q. Have you ever been involved in any kind of

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1 involved, whether it was -- whether there was a record
2 kept of the training, those kinds of thing. Go ahead.
3 MS. WESTBY: Object to the form of the
4 question.
5 MR. GOSMAN: I'm asking for a narrative.
6 MS. WESTBY: Answer it if you can, if you
7 know what he's asking.
8 MR. THOMPSON: Join.
9 THE WITNESS: We conduct training in room
10 entry, in building entry and response to active
11 shooters, in response to barricade gunmen, in response
12 to hostage rescue, in response to warrant service, in
13 many different areas.
14 BY MR. GOSMAN:
15 Q. When do you do this training?
16 A. I believe some of them took place on Fridays.
17 Q. So they would be part of that in-service
18 record that we've looked at as an exhibit --
19 MR. THOMPSON: Objection as to form.
20 BY MR. GOSMAN:
21 Q. -- what is that -- 35?
22 And your answer, sir? I didn't catch the
23 answer.
24 A. What was the question?
25 Q. You said Friday Trainings, you believe some

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1 training operation like that?
2 A. At any time?
3 MS. WESTBY: Same objection.
4 BY MR. GOSMAN:
5 Q. Well, prior to February 24th on 19 -- of
6 2009.
7 MR. THOMPSON: I'd join in the objection.
8 THE WITNESS: We have -- we conduct training
9 all the time in some or all of those things.
10 BY MR. GOSMAN:
11 Q. Some or all of those things?
12 A. The things that you mentioned.
13 Q. And I did mention flashbangs. Apparently --
14 I mean, you haven't deployed flashbangs except in the
15 context of your training, your coursework with the
16 Countermeasures Tactical Institute?
17 MS. WESTBY: Object to the form.
18 BY MR. GOSMAN:
19 Q. Let me carry on. What do you mean by "all of
20 those things"?
21 A. All of the things that you mentioned in your
22 question.
23 Q. Why don't you take just a minute, then,
24 Officer, and tell me what kinds of training exercises
25 you're talking about? And what was conducted, who was

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1 of these operations were conducted in your Friday
2 Trainings, correct?
3 A. From what I can remember, they were done on
4 Fridays. That was kind of our training time set aside.
5 They could have been done on different days. I guess
6 my point is we do periodic training. And in those
7 areas as well.
8 Q. All right. Have you ever conducted a
9 training involving room entry, building entry, and a
10 hostage situation, other than on a Friday night
11 training or in the context of your coursework that's
12 listed on your P.O.S.T. training records?
13 MS. WESTBY: Object to the form of the
14 question.
15 THE WITNESS: It's possible we covered
16 something in the field training and things that might
17 not have been necessarily documented.
18 BY MR. GOSMAN:
19 Q. And I can appreciate that it's possible. But
20 I assume by your saying that, that in fact, the
21 training that you're talking about generally occurred
22 either in the context of your P.O.S.T. training
23 coursework or in your Friday night in-service training
24 sessions or Friday in-service training sessions? I
25 don't know whether it was Friday night or not. Is that

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1 right?

2 A. That's when we conducted a majority of it.

3 Q. All right. So when you would conduct this

4 training, Officer Danzer, what role would you play?

5 Did you play the same -- I'll let you answer that

6 question. I'm sorry.

7 MS. WESTBY: And I'm sorry. Are we talking

8 about -- are you talking about a specific training, or

9 are you generally talking about the Friday Trainings?

10 MR. GOSMAN: No, I'm talking about room

11 entry, building entry, overwhelming show of force,

12 automatic weapons, tactical gear, that kind of thing.

13 MS. WESTBY: Okay. And just because I think

14 I should tell you why I'm objecting, it's just so

15 compound. You are including so many different things

16 in there. That's my objection.

17 MR. GOSMAN: Okay.

18 MS. WESTBY: And I'm just letting you know.

19 MR. GOSMAN: Thank you.

20 BY MR. GOSMAN:

21 Q. And I'm going to let the witness know that

22 I'm talking about those kinds of entries that I called

23 dynamic entry or SWAT-type entry, which most of the

24 rest of the industry knows, and is aware of in terms of

25 how they are defined.

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1 Since we don't have an agreement on that

2 here, I'm breaking it down into separate elements, such

3 as overwhelming show of force, element of surprise,

4 multiple officers, tactical weapons, and, you know,

5 battering rams, room clearing, flashbang devices, all

6 of those things are part of a dynamic situational

7 response. And I want you to know -- I want you to tell

8 me what role you played in the trainings when you

9 trained as a group to do this work?

10 MR. THOMPSON: Object as to form.

11 MS. WESTBY: Object.

12 THE WITNESS: Role as -- I went through the

13 different -- all different parts of entering a room or

14 whatever type of training you were talking about.

15 Say we're covering a room entry. My role was

16 to be trained and cover all different areas that

17 involved that.

18 BY MR. GOSMAN:

19 Q. The room entry?

20 A. Room entry is one example. Clearing a room,

21 team entry into a room. In that case, I would have

22 been a team member entering the room. So we just --

23 whatever the instructor or who was conducting the

24 training was trying to train, I was instructed in those

25 things.

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1 Q. Okay. So in other words, you weren't

2 instructed as a team, and you didn't practice as a

3 team, you simply took course instruction and were --

4 and reviewed different practices, such as room entry?

5 MR. THOMPSON: Object as to form.

6 MS. WESTBY: Yeah, join.

7 THE WITNESS: No.

8 BY MR. GOSMAN:

9 Q. Well, go ahead and clear it up for me.

10 A. We would practice as a team.

11 Q. Okay.

12 A. I would define team as the officers there.

13 Q. Okay.

14 A. For instance, if we were practicing a room

15 entry, and we had a team of officers, the team would

16 enter. So we'd work together as a team.

17 Q. All right. So we've talked about room

18 entering, I assume this took place on Friday nights or

19 Fridays, the Friday Training, correct?

20 A. Whenever -- if it was on a Friday, if we had

21 to reschedule it for a different day, yes.

22 Q. So was it either on a Friday or it had to be

23 rescheduled to a different day?

24 A. We called it Friday Training because that was

25 typically when we did it. I can't say if -- memory,

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1 you know, if it happened a different day, specific day

2 or not.

3 Q. All right. All right. And so you mentioned

4 that there were different officers that were present

5 from time to time?

6 A. Yes.

7 Q. And so there really was no team that was

8 provided training on a regular basis to perform these

9 different functions?

10 MS. WESTBY: Object to the form of the

11 question.

12 MR. THOMPSON: Join.

13 THE WITNESS: What's your definition of a

14 team.

15 BY MR. GOSMAN:

16 Q. I mean, a group that trains regularly and

17 together where each individual member has specific

18 assignments in the performance of the team activity.

19 A. In that definition, I would say we were

20 acting as a team then.

21 Q. So you did this with the same officers over

22 and over again?

23 A. Yes, everyone in the department.

24 Q. Okay. And, of course, this is the kind of

25 training that would normally be documented?

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1 A. I don't believe it -- I didn't document it,
2 but --
3 Q. Somebody did?
4 A. -- it's possible. I can't speak to that,
5 but ...
6 Q. All right. So you've cone room -- we've
7 talked about room entry, and apparently you did that
8 from time to time. What else did you do in these
9 Friday sessions, these training sessions?
10 A. Building entries.
11 Q. Okay. How many times did you practice that?
12 A. I have no way of putting a number to that.
13 Q. Well, was it more than once?
14 A. Yes.
15 Q. All right. Was it more than twice?
16 A. Yes.
17 Q. All right. Did you practice -- do you
18 have -- for instance, on the night of the 24th of
19 February 2009, what kind of gear were you wearing,
20 Officer Danzer? Did you have on a tactical uniform?
21 MS. WESTBY: Object to the form of the
22 question.
23 THE WITNESS: I was wearing my uniform, my
24 patrol uniform. I was also wearing a vest that carried
25 a ceramic plate, which offered additional protection to

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1 me.
2 BY MR. GOSMAN:
3 Q. Uh-huh.
4 A. More than my personal vest would. On that
5 vest, we had additional equipment or pouches on it.
6 Q. What was the additional equipment?
7 A. We had extra ammunition, medical pouch. And
8 I had -- let's see, what did I have on? I think I had
9 a pouch that had, like, some snacks and water in it. I
10 believe that's ...
11 Q. What weapon were you carrying?
12 A. I was carrying H&K MP5.
13 Q. H&K MP5?
14 A. Yes.
15 Q. Okay. What is that?
16 A. It is a weapon that shoots a 9mm round.
17 Q. Is it a rifle?
18 A. A 9mm is a pistol round.
19 Q. Okay.
20 A. But it's a longer weapon.
21 Q. Okay. Is it fully automatic?
22 A. No.
23 Q. Semiautomatic?
24 A. Yes.
25 Q. Do you normally carry that weapon in your

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1 patrol duties?
2 A. At that time, no.
3 Q. Did there come a time when you carried that
4 weapon normally in your patrol car?
5 A. Yes.
6 Q. All right. On that night, you were -- you
7 were dressed a certain way. Had you ever practiced --
8 did you ever put on that garb before and met with the
9 officers and conducted building entry and room
10 clearance?
11 A. Yes.
12 Q. Okay. More than once?
13 A. Yes.
14 Q. Who was the team leader? Did you have a team
15 leader?
16 A. I believe Sergeant Chretien was in charge of
17 the tactical considerations.
18 Q. Okay. And when you say "in charge of
19 tactical considerations," I understand that, at least
20 as far as you know, there hadn't been any tactical team
21 used prior to the 24th of February in the time that you
22 had been with the Powell Police Department, except for
23 the instance involving the trailer?
24 MR. THOMPSON: Objection as to form.
25 MS. WESTBY: Join.

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1 BY MR. GOSMAN:
2 Q. Go ahead.
3 A. I was speaking to my instances when I'm on
4 duty or I am called in to work.
5 Q. Okay.
6 A. And in reference to your question of being --
7 us entering a building or a structure of some type.
8 Q. Yes. Okay. When did you first learn that
9 you would be doing a dynamic entry of the Wachsmuth
10 home on the 24th of February?
11 A. I'm not -- I'm not sure I learned that. I
12 guess I'm confused by your question.
13 Q. Okay. Well, it could have something to do
14 with what we talked about in terms of dynamic entry.
15 When did you learn that the Wachsmuth search warrant
16 was going to be served by a team of officers that would
17 involve a flashbang, automatic weapons, and --
18 actually, were there any automatic weapons used that
19 night?
20 A. Not that I knew about.
21 Q. Okay. So they were semiautomatic weapons?
22 A. I believe they all are.
23 Q. Okay. That it would involve a team of
24 officers, breaching of the door, use of a flashbang,
25 and entry by a team of -- a team using semiautomatic

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1 weapons, rifles --
2 MR. THOMPSON: Objection as to form.
3 BY MR. GOSMAN:
4 Q. -- as opposed to just service pistols?
5 MR. THOMPSON: Same objections.
6 THE WITNESS: When did I learn about that?
7 BY MR. GOSMAN:
8 Q. Yes.
9 A. Those are options discussed during planning
10 of the execution of the search warrant.
11 Q. Okay. How did you first find out that -- how
12 were you contacted about this warrant?
13 A. I was called in while I was off duty.
14 Q. Okay. You were at home, correct?
15 A. I have no idea where I was at.
16 Q. Okay. What did they say? What were you
17 told?
18 A. I don't know exact -- what was exactly told
19 me.
20 Q. Okay. And what did you do? You got a call,
21 and you said -- and someone, I assume, told you to come
22 down to the police station, they would like to have you
23 help serve a warrant?
24 A. Yes.
25 Q. Is that what happened?

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1 A. Yes.
2 Q. Okay. And about what time was that?
3 A. Did I receive the call?
4 Q. If you remember.
5 A. I don't remember.
6 Q. Okay. Was it after dark?
7 A. I believe it was still light outside.
8 Q. Okay. And so you went to the police
9 department?
10 A. Yes.
11 Q. Who was there? In the group that you were
12 talking to about this situation?
13 A. Who was -- I'm asking for a clarification, I
14 guess. Who was present when I got there?
15 Q. Yes.
16 A. Or, who was present that night, whether they
17 came there or later.
18 Q. No. Who was present when you got there?
19 A. I don't remember who exactly was there.
20 Q. Do you remember anybody being there when you
21 arrived?
22 A. The officers on duty. I know they were
23 there. I guess I shouldn't say I know they were there.
24 I know who was there. I don't know what time they
25 arrived, and who was where at what time.

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1 Q. I'm going to back up for just a second and
2 ask you this: Did you ever have any SWAT training?
3 MS. WESTBY: Object to the form of the
4 question.
5 BY MR. GOSMAN:
6 Q. Do you know what SWAT -- as a patrol officer,
7 are you familiar with what SWAT stands for, what it
8 means?
9 A. Yes.
10 Q. Okay. Have you ever had any SWAT training?
11 MS. WESTBY: Object to the form.
12 Go ahead.
13 THE WITNESS: Yes, but not with that title.
14 BY MR. GOSMAN:
15 Q. Okay. What was the title?
16 A. Parole Tactical Response was one.
17 Q. Okay.
18 A. And Patrol Active Response Shooter was
19 another.
20 (Exhibit 37 identified)
21 BY MR. GOSMAN:
22 Q. Have you ever seen the Powell Police Crisis
23 Response Tactics document?
24 A. I don't know.
25 Q. Okay. And I don't know that we've got it

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1 listed as an exhibit at this time.
2 I'm going to read you something from this
3 document, and I'm going to ask you to comment on it.
4 This is a document that was produced by the City of
5 Powell. This is apparently their Tactical Response
6 Program. And it indicates on the document that it is
7 identified as Bates-stamp 116, Defendant's 116.
8 "It would take a fully trained SWAT or
9 hostage rescue team to deal with many of these types of
10 critical incidents. As an agency, we cannot justify a
11 SWAT team by these types of activity being commonly
12 present here, and a SWAT team requires a great deal of
13 training or time" -- "great deal of training and time."
14 Do you understand what that paragraph is
15 referring to?
16 A. Possibly.
17 Q. Okay. Go ahead and give me your best
18 estimate of what it means.
19 MS. WESTBY: Object to the form.
20 THE WITNESS: A SWAT team requires lots of
21 training and probably time and an investment.
22 BY MR. GOSMAN:
23 Q. Okay. It probably requires a lot of training
24 or time? I mean, if you don't know, that's fine.
25 Does it require -- do you know whether it

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1 requires a lot of training and time? Do you know the
2 difference between a SWAT team and just getting a bunch
3 of guys together and breaking down a door?
4 MS. WESTBY: Object to form.
5 MR. THOMPSON: Object to form.
6 Argumentative. Asked and answered.
7 THE WITNESS: I mean, how you phrase it that
8 way -- I know what a SWAT team is.
9 BY MR. GOSMAN:
10 Q. You know what a SWAT team is. Okay. Good.
11 Have you had any SWAT training? I'm going to
12 ask that question again.
13 MS. WESTBY: Object to the form of the
14 question.
15 MR. THOMPSON: Join.
16 MS. WESTBY: Asked and answered, at least a
17 couple of times.
18 THE WITNESS: Again, that training, but not
19 necessarily under that title.
20 BY MR. GOSMAN:
21 Q. You had one 50-hour course in 2005, correct?
22 A. Yes.
23 Q. And was there anything in that course that
24 indicated that you were actually being trained as a
25 SWAT officer or to perform as -- in a SWAT team?

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1 MR. THOMPSON: Objection as to form.
2 THE WITNESS: The individual that puts on the
3 training, trains SWAT teams in the same tactics that he
4 was training us.
5 BY MR. GOSMAN:
6 Q. You know, that wasn't what I asked, Officer.
7 I just asked if you had been trained as a SWAT team
8 member in that course?
9 MS. WESTBY: Object to the form of the
10 question. Asked and answered.
11 MR. THOMPSON: Join.
12 THE WITNESS: Again, that training, not under
13 that title.
14 BY MR. GOSMAN:
15 Q. All right. So you were SWAT trained, but you
16 just didn't have that title attached to it?
17 MS. WESTBY: Object to the --
18 BY MR. GOSMAN:
19 Q. Is that correct?
20 MS. WESTBY: Object to the form of the
21 question.
22 THE WITNESS: Training was -- we received the
23 same training that SWAT teams would.
24 BY MR. GOSMAN:
25 Q. You did?

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1 A. The training he conducted is what he puts the
2 SWAT teams through.
3 Q. And how do you know that?
4 A. He trains -- he said he trains SWAT teams in
5 tactics -- these types of tactics, that he was training
6 us in the same type of tactics.
7 Q. Well, just because somebody goes to a
8 firearms class and takes a basic firearms class doesn't
9 make them a firearms expert, does it?
10 MS. WESTBY: Objection to form.
11 MR. THOMPSON: Objection to form.
12 Argumentative.
13 BY MR. GOSMAN:
14 Q. I mean, you certainly see the difference
15 between going to a class and participating in some of
16 these basic concepts, and being a trained member of a
17 team that actually performs these functions in real
18 life?
19 MS. WESTBY: Mr. Gosman, you're to the point
20 where you're not behaving appropriately. Please limit
21 your questions to appropriate deposition questions.
22 BY MR. GOSMAN:
23 Q. Do you understand that difference, Officer?
24 MS. WESTBY: Object to the form --
25

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1 BY MR. GOSMAN:
2 Q. Between having -- being part of a 50-hour
3 course once, and being trained as a SWAT team member?
4 MR. THOMPSON: Objection as to form. Asked
5 and answered. Argumentative. Badgering.
6 MS. WESTBY: I join.
7 BY MR. GOSMAN:
8 Q. Go ahead.
9 A. I'm sorry. What was the question again?
10 BY MR. GOSMAN:
11 Q. Do you understand the difference between
12 taking a course one time that is -- that deals with
13 tactical issues and being a qualified member of a SWAT
14 team or being qualified to function as a SWAT team
15 member?
16 MS. WESTBY: Object to the form of the
17 question. In addition to all of those other things,
18 misstates his testimony.
19 MR. THOMPSON: Join.
20 THE WITNESS: I can't answer that in a yes or
21 no question.
22 BY MR. GOSMAN:
23 Q. Okay. Well, answer it any way you want to,
24 then, Officer.
25 A. Well, we don't have the title of the SWAT

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1 team.
2 Q. Okay. That's because you're not trained as a
3 SWAT team.
4 MS. WESTBY: Object to the form of the
5 question.
6 BY MR. GOSMAN:
7 Q. Correct?
8 MS. WESTBY: Object to the form of the
9 comment. Please allow him to finish his --
10 MR. GOSMAN: He said he was not trained as a
11 SWAT team, he stopped, and I asked him, "It's because
12 you're not trained as a SWAT team?"
13 MR. THOMPSON: Counsel, you can't ask him one
14 question and interrupt his answer and pose another
15 question.
16 MR. GOSMAN: Okay. All right.
17 MR. THOMPSON: We'll be here until midnight.
18 BY MR. GOSMAN:
19 Q. Okay. Go ahead, Officer. I'm sorry.
20 A. We don't have the title of a SWAT team.
21 Q. Okay.
22 A. We are a small department.
23 Q. Yes.
24 A. We don't have the luxury of being able to set
25 guys aside specifically to a team to handle just those

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1 THE WITNESS: I was one of the individuals
2 that entered the residence initially.
3 BY MR. GOSMAN:
4 Q. Okay.
5 A. So I was in that role.
6 Q. Did you have a ski mask on or anything like
7 that?
8 A. No.
9 Q. So the officer's faces were all uncovered?
10 A. I don't know for sure. But from what I can
11 remember, our faces were uncovered.
12 Q. Okay. So you were part of the entry team,
13 and you carried an automatic weapon -- or a
14 semiautomatic weapon, correct?
15 A. Yes.
16 Q. And you've had training in firearms? You've
17 had training in, you know, entering a building,
18 correct? You've had this training before?
19 A. Yes.
20 Q. Okay. And in the course of this training,
21 did you -- were you -- how were you taught to carry
22 your weapon when you entered the premises?
23 A. We were taught to keep our -- to carry
24 weapons against our bodies with a sling slung over our
25 body.

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1 things.
2 Q. Okay.
3 A. We're too small. So when we have an
4 incident, it's the officers -- the patrol officers that
5 have to handle those things. That's why we receive
6 that training, so we could handle that. That's the
7 difference.
8 Q. And -- all right. Thank you.
9 And that training was your 50 hours of patrol
10 tactic -- Tactics Response Training in October of 2005?
11 A. That was part of it.
12 Q. And then the Friday night training -- or the
13 Friday Trainings that you say occurred since then?
14 A. That was -- we continued that training.
15 Q. All right. Okay. So let's get back to the
16 night in question here.
17 What was your role in the execution of the
18 search warrant on the Wachsmuth residence?
19 A. At what part?
20 Q. You had more than one role, Officer Danzer,
21 that night?
22 A. I guess so.
23 Q. Okay. Well, tell me what they were.
24 MS. WESTBY: Object to the form of the
25 question.

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1 Q. So you're telling me that you were actually
2 taught in room clearing tactics to have your weapon
3 next to your body and down to the ground?
4 MR. THOMPSON: Objection as to form.
5 Misstates -- well, your question wasn't that.
6 BY MR. GOSMAN:
7 Q. Well, he entered the residence with his
8 weapon down, correct?
9 A. Yes.
10 Q. All right. And did you clear the rooms with
11 your weapon down?
12 A. Yes.
13 Q. Is that what you were trained to do as -- in
14 this situation involving clearing rooms?
15 A. Yes.
16 Q. All right. Who trained you to do that?
17 A. Doug Pechtel.
18 Q. And was that in the Patrol Tactical Response
19 course you took in 2005?
20 A. Yes.
21 Q. So we've got his materials, and we can review
22 those materials, then.
23 MS. WESTBY: Is that a comment?
24 MR. GOSMAN: Yeah, it was. You got me there.
25

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1 (Exhibit 27 identified)
2 BY MR. GOSMAN:
3 Q. Okay. I'm going to have you go ahead and
4 turn to Exhibit 27 and we'll see what we can do with
5 this.
6 Does this look familiar to you? Is this the
7 course materials that were associated with this class
8 you took in 2005?
9 A. Yes.
10 Q. Okay.
11 A. This page does.
12 Q. Okay. All right. Go ahead and take a look
13 at enough pages to satisfy yourself that that's the
14 manual.
15 A. I believe we were given this during that
16 training.
17 Q. Okay. Okay. And these are the principles
18 that you're taught in this course, and I'm referring to
19 page -- let's see, 15. Go ahead -- that's
20 Bates-stamped 18.
21 Mindset: The ability to function forward
22 under very uncommon conditions. Judgment, attitude,
23 creativity, physical ability, team player."
24 Are those the elements that you were taught?
25 A. I believe that was something that was

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1 Q. Okay. Well, go ahead and give me your
2 definition of dynamic entry, so we can get this behind
3 us at least.
4 A. A dynamic entry would be something as opposed
5 to you're not sneaking in, I guess. You're --
6 Q. Element of surprise, would that be one of the
7 factors?
8 A. It could be.
9 Q. Could be?
10 A. It could be.
11 Q. Okay. So there could be situations where you
12 don't have the surprise. The hostage taker, for
13 instance, knows you're coming?
14 All right. "Assaulter moves as fast as he
15 can shoot accurately." That's on Page 21. Do you see
16 that?
17 A. Yes, I do.
18 Q. All right. Let's see here. What is the
19 "P.I.E.R. Philosophy"? Do you remember that?
20 I'll ask you to go ahead and turn to Page 27.
21 MS. WESTBY: Bates-stamped 27 or -- okay.
22 BY MR. GOSMAN:
23 Q. Do you remember being taught about the
24 P.I.E.R. Philosophy?
25 A. I believe parts of that were discussed.

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1 covered.
2 Q. Covered? Okay.
3 When you got out of that course, did you have
4 a certificate that you had completed the course, or did
5 you have a certificate that you were capable of
6 conducting dynamic operations?
7 A. I received a certificate. I'm not sure what
8 it said.
9 Q. Okay.
10 A. I don't know. I don't have it in front of
11 me.
12 Q. Okay. And I note there's something here.
13 The options of the hostage taker. This is on Page 18.
14 Let's go ahead and turn to that for just a second.
15 "Surrender, suicide, kill hostages, leave with
16 hostages." So you were -- you dealt with a hostage
17 situation in this course, correct?
18 A. Yes.
19 Q. And then, by golly, there's -- let's see,
20 Page 20 is "Dynamic Entry." Certainly you've heard
21 this phrase, "dynamic entry," haven't you, Officer?
22 A. Yes.
23 Q. You know what a dynamic entry is?
24 A. It depends on who is using it and what they
25 are referring to.

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1 Q. P.I.E.R. is not intended to be used as a SWAT
2 team. It's not intended to be used as a means of
3 resolving any type of critical incident, other than a
4 immediate life-threatening crisis. You were taught
5 that, correct?
6 A. I don't remember. The course wasn't entitled
7 P.I.E.R.
8 Q. It wasn't?
9 A. The title wasn't called P.I.E.R.
10 Q. What was the course trying to teach you,
11 Officer?
12 A. How to deal with --
13 Q. Emergency situations, correct?
14 A. That would be a part of it.
15 Q. What else?
16 A. It taught us a wide variety of things, of
17 tactics.
18 Q. Okay. All right. Is it your understanding
19 that this course was designed to teach you, the patrol
20 officer, how to respond in emergency situations when
21 there are no other resources available, such as a
22 qualified SWAT team to prevent loss of life or to make
23 sure that the law is being enforced?
24 A. I don't know if I can fully agree with that
25 statement.

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1 Q. All right. Well, tell me why not. I mean,
2 what do you, as a patrol officer, know about
3 functioning in a SWAT-type setting? You're being
4 trained to respond to an emergency situation, correct?
5 MS. WESTBY: I'm objecting to the form of the
6 question. You make these comments, and then you throw
7 in an unrelated question.
8 MR. GOSMAN: That's true. I did that.
9 All right. I'll withdraw that question.
10 BY MR. GOSMAN:
11 Q. Officer, you're being trained to respond in
12 an emergency situation. You're not being trained to
13 serve in a SWAT team unit, correct, when you go to this
14 course for 50 hours?
15 MS. WESTBY: Object to the form of the
16 question.
17 MR. THOMPSON: Join.
18 THE WITNESS: We learn SWAT tactics there.
19 BY MR. GOSMAN:
20 Q. You learn how to respond in an emergency
21 situation when there was no SWAT team available,
22 correct?
23 MR. THOMPSON: Object as to form.
24 MS. WESTBY: Yeah. Join.
25 THE WITNESS: We learned to respond to

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1 in-progress calls, active situation calls.
2 BY MR. GOSMAN:
3 Q. Okay. And that's what that course was trying
4 to teach you, correct?
5 A. Part of it.
6 Q. First responder tactical situations?
7 A. That was part of it.
8 Q. All right. And the rest of it was?
9 A. We trained in other things as well. That's
10 an all-encompassing statement. There's a lot of things
11 underneath of that that require training. And these
12 areas overlap. It's not just in-progress. It's --
13 they overlap to other things well.
14 Q. Well, let's be a little more specific than
15 that. What other things?
16 A. For instance, if you have to respond to an
17 active shooter, that's inside a building, you have to
18 enter the building. And because you have to enter the
19 building, you need to receive training in how to enter
20 the building.
21 Q. All right. And I don't really think we have
22 that much of a disagreement here. There is a
23 difference between having to enter a building and take
24 care of an active shooter and having a situation where
25 you don't have to do anything right now. You can call

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1 on resources that are better trained to respond to the
2 situation.
3 MS. WESTBY: Object to the form of the
4 question.
5 BY MR. GOSMAN:
6 Q. Would you agree with that?
7 A. Just kind of repeat back to you so I
8 understand.
9 Q. Yeah, go ahead.
10 A. You're asking that there's times when you
11 need to respond right away, and there's times that you
12 don't have to respond right away? Is that your
13 question?
14 Q. Yeah, let's start with that. Go ahead.
15 A. Yes, there's certain calls that require
16 immediate response.
17 Q. And there are certain calls that don't
18 require an immediate response?
19 A. Yes.
20 Q. And those calls can be handled -- if they
21 require a specialized team, they should be handled by a
22 specialized team, if there's no emergency that requires
23 people who are not trained in that field to take that
24 action, correct?
25 MS. WESTBY: Object to the form of the

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1 question.
2 MR. THOMPSON: Join.
3 THE WITNESS: I guess I'm not sure what your
4 question is on that. Can you repeat it or break it
5 down or something?
6 BY MR. GOSMAN:
7 Q. Yes. If there is no emergency situation, and
8 yet you are required a dynamic entry, all of this
9 coursework is designed to tell you that you should
10 allow a qualified team to enter and do their work when
11 you have the opportunity to bring them in?
12 MS. WESTBY: Object to the form of the
13 question.
14 MR. THOMPSON: Join.
15 THE WITNESS: He was training officers to
16 respond primarily to in-progress situations.
17 BY MR. GOSMAN:
18 Q. All right.
19 A. And who makes a call and who responds to what
20 in a thing that's not active, that's a decision that's
21 probably -- could be made by someone who, you know, not
22 a typical officer. Maybe, maybe not. So he didn't --
23 he doesn't really focus on that with us. Gave us the
24 skills we needed.
25 Q. He gave you the skills you needed to act when

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1 there was no one else able to act in that situation?
2 MS. WESTBY: Object to the form of the
3 question.
4 MR. THOMPSON: Join.
5 THE WITNESS: Not necessarily.
6 BY MR. GOSMAN:
7 Q. Well, in terms of available law enforcement
8 resources, correct?
9 MS. WESTBY: Object to the form of the
10 question.
11 THE WITNESS: In terms of -- I'm sorry. What
12 was the question?
13 MS. WESTBY: You know, we've gone over this
14 area over and over.
15 MR. GOSMAN: Yeah, we have.
16 MS. WESTBY: And you've received the answers
17 you've received. I think it's time to move on.
18 BY MR. GOSMAN:
19 Q. Okay. Anyway, I guess the course that you
20 took sort of speaks for itself, and there are qualified
21 people who can tell us what they were trying to teach
22 you. Would it be fair to say that?
23 MS. WESTBY: Object to the form of the
24 question.
25 MR. THOMPSON: Join.

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1 over my shoulder.
2 Q. Right.
3 A. Position the weapon in front of my body. And
4 then I had my hands on the weapon, and I had it pointed
5 towards the ground.
6 Q. And that's -- that's how you were taught to
7 clear a room?
8 A. Yes.
9 Q. And what happens if you need to use your
10 weapon when you're entering a room, if there's somebody
11 that poses a threat, say a hostage taker, and you got
12 your weapon pointed to the ground?
13 A. Then you bring the weapon up.
14 Q. And if the shooter has his weapon up and
15 pointed at you, what do you think your chances of
16 survival are there?
17 MS. WESTBY: Object to the form of the
18 question.
19 MR. THOMPSON: Join.
20 BY MR. GOSMAN:
21 Q. Do you really remember, Officer, how that
22 weapon is supposed to be deployed as you're clearing a
23 room, in a room-clearing situation?
24 A. Yes.
25 MR. THOMPSON: Objection to form. Asked and

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1 THE WITNESS: Are you talking about the
2 instructor of this course being able to speak to what
3 he was training?
4 BY MR. GOSMAN:
5 Q. Yeah, what his course was designed to do and
6 what the course materials were designed to do?
7 A. I would agree he would probably give an
8 explanation of that.
9 Q. All right. Now, I think we did have a
10 question, though, of -- a minute ago -- about whether
11 or not you were supposed to -- what your weapon
12 position was. And you were telling me -- and -- you
13 were telling me that your weapon position was down, and
14 you'd clear the rooms with your weapon faced down to
15 the ground and with it actually slung over your
16 shoulder?
17 MS. WESTBY: Object to the form of the
18 question. Misstates his testimony.
19 BY MR. GOSMAN:
20 Q. Well, let's clear that up. Go ahead.
21 A. I'm not sure what you meant by "let's clear
22 that up."
23 Q. Yes. What I need to know is how that weapon
24 was carried by you as you deployed in the house?
25 A. Okay. There was a sling on it that I had

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1 answered.
2 BY MR. GOSMAN:
3 Q. Do you know about room-clearing tactics like
4 the Israeli Lean?
5 A. Yes.
6 Q. Is the gun supposed to be up in a ready
7 position as you undertake an Israeli Lean?
8 A. I think that depends on how you're doing the
9 Israeli Lean.
10 Q. In other words, it depends on whether the gun
11 is up or down?
12 A. My understanding of the Israeli Lean is how
13 you lean out, not necessarily where you have your
14 weapon at.
15 Q. All right. And where is your weapon when
16 you're doing an Israeli Lean? How is it to be
17 deployed?
18 A. That depends on who is doing the instructing.
19 I don't know how every possible trainer trains how to
20 do the Israeli Lean.
21 Q. So you went into the house with your weapon
22 pointed to the ground, correct, and you kept it pointed
23 to the ground as you cleared the rooms?
24 A. Yes.
25 Q. Did you have a specific assignment to clear

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1 the rooms?
2 A. No.
3 Q. No? What was your assignment?
4 A. Assignment was to enter the house and to
5 clear it.
6 Q. And to clear it?
7 A. Yes.
8 Q. How many men were involved -- given that
9 assignment?
10 A. I believe there were five or six individuals.
11 Q. Did you --
12 A. I mean, officers.
13 Q. When you met at the police station prior to
14 performing this warrant service, did you -- were you
15 shown an entry plan?
16 A. Yes, we talked about plans.
17 Q. Okay. What did you talk about? What were
18 the plans?
19 A. Part of that was to have a team at the front
20 door, a -- are you talking about entry plans?
21 Q. Yes, I am.
22 A. Okay. A team at the front of the house, and
23 one that came up to the back of the house.
24 Q. Okay. That was it?
25 A. To enter?

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1 And I think you've said you were supposed to clear --
2 you were supposed to enter with a team and clear the
3 house. Did you have any further instructions than
4 that?
5 A. Oh, yes.
6 Q. Okay. What were they?
7 A. We were to -- the team at the front, which I
8 was a part of, was going to stage at the front of the
9 house and enter the house. Things we took into
10 consideration was whether or not entry would be given
11 to us or not. And ...
12 Q. Go ahead.
13 A. So that was part of the considerations.
14 Q. So part of the considerations was whether or
15 not the entry would be provided? In other words,
16 whether the door would be opened?
17 A. Somebody opened the door.
18 Q. If somebody opened the door?
19 A. (Witness nods head.)
20 Q. All right. And did you understand, then,
21 that this was what they call a knock and announce
22 warrant, which required the presence of the officers be
23 made known, and that the occupant of the house be given
24 an opportunity to answer the door?
25 A. Yes.

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1 Q. Well, you just said there was a team that was
2 set up to enter the house, a team at the back of the
3 house, and a team at the side of the house?
4 A. There was -- to enter, there was a team at
5 the front -- you're talking about our plans of entry?
6 Q. Yes.
7 A. There's a team at the front of the house, and
8 there's a team to come up to the back of the house.
9 Q. All right. And who was to perform what
10 functions?
11 A. We had officers --
12 Q. And by the way, you don't have to have this
13 memorized. But generally speaking, who was to perform
14 what functions?
15 A. Like individual officers?
16 Q. Yes. Well, I don't care about the names of
17 the individual officers, at least right now. What was
18 the team in the back supposed to do? Do you remember
19 that? Was that made clear in the plan?
20 A. At the time, I believe it was.
21 Q. Okay. You don't remember exactly what it
22 was, though?
23 A. Not exactly.
24 Q. That's fine.
25 All right. So what were you supposed to do?

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1 Q. Okay.
2 THE COURT REPORTER: Counsel, can we take
3 just a 2-minute break?
4 MR. GOSMAN: Yes, we sure can.
5 (Recess taken 6:05 to 6:15
6 p.m., October 4, 2010)
7 BY MR. GOSMAN:
8 Q. Okay. Let's go ahead and go back to the time
9 that you went down to the police station that night,
10 the 24th of February. Who was there when you arrived?
11 A. I don't remember.
12 Q. And how long did it take to assemble the
13 group?
14 A. I don't remember the time it took.
15 Q. Was -- did you speak with anyone about what
16 you were there for, prior to the time that the group
17 was assembled and they were given the information about
18 the plan?
19 A. What was the first part? I'm sorry.
20 Q. Yeah. Did you speak with anybody while you
21 were waiting for this group to be assembled?
22 A. I spoke to whoever called me on the phone. I
23 came down.
24 Q. You don't remember who that was?
25 A. I don't, no.

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1 Q. All right. So you came down, and you were in
2 the middle of a little narrative there about who you
3 spoke to.
4 A. I don't remember who I spoke to down there.
5 Or at what point everyone -- there was people there
6 already. There was still people planning on showing
7 up. I just -- I don't remember the time frame, though.
8 Q. It took some time to get the group together,
9 though, correct?
10 A. A period of time passed, yes. I'm not sure
11 what it was, though.
12 Q. Was Chief Feathers there?
13 A. There as in the building, or the room we were
14 in?
15 Q. I'm really talking about, you know, this
16 evening and the plan of the execution of the search
17 warrant. I don't care if he was in the building and
18 not in the room. So yeah, I want to know if he was
19 there with you guys.
20 A. I don't remember if he was physically
21 present.
22 Q. Did you understand that Chief Feathers had
23 approved the operation?
24 A. That was my understanding, that he had
25 approved it in some way.

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1 Q. Who told you that?
2 A. I'm not sure if somebody told me.
3 Q. You may have just assumed that Chief Feathers
4 approved the plan?
5 A. I believe it was discussed.
6 Q. It was discussed that Chief Feathers had
7 approved the plan?
8 A. Or had approved -- somebody talked to him
9 about what was going on.
10 Q. That's your understanding?
11 A. Yes.
12 Q. All right. And who was in charge of this
13 operation?
14 A. The whole thing, or certain parts of it?
15 Q. Well, the whole thing.
16 A. I don't know if -- I don't know.
17 Q. Did you meet as a group?
18 A. Yes.
19 Q. Did someone take charge?
20 A. Yes.
21 Q. Who?
22 A. Sergeant Chretien was in charge of the
23 tactical side of it.
24 Q. What else was there to be in charge of? You
25 were meaning to execute a search warrant with the

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1 entire -- or nearly the entire police force. Other
2 than the search warrant and the tactical service of
3 that warrant, what were you -- who else would have been
4 in charge? What other issues were there to be in
5 charge of?
6 A. There was tactical considerations on how
7 things were done. There was the actual search that
8 took place.
9 Q. Who was in charge of that?
10 A. I'm not sure.
11 Q. Okay. Let me ask this question: Do you have
12 any idea whether there were different people in charge
13 of different aspects of this operation, or was there
14 one person in charge of the whole thing?
15 A. Sergeant Chretien was in charge of the
16 tactical considerations.
17 Q. Okay. Was someone else in charge of the
18 search?
19 A. I'm not sure.
20 Q. All right. Did you have anything to do with
21 the search?
22 A. No.
23 Q. So the group assembled, and what happened
24 then?
25 A. Everyone went to their positions.

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1 Q. Well -- all right. When I say "the group
2 assembled," I mean, you all got together there at the
3 police department, and you were waiting to find out
4 what you were going to do.
5 And I want you to tell me what happened. How
6 did you learn about what it was that you were going to
7 do. Who was involved in providing you that
8 information. What information were you given, that
9 sort of thing?
10 MS. WESTBY: At the police department?
11 MR. GOSMAN: Yes, at the police department.
12 THE WITNESS: I'm sorry. I misunderstood
13 what you were inquiring about.
14 Are you wanting the officers that -- who was
15 doing the discussion?
16 BY MR. GOSMAN:
17 Q. Yes. I want the people that were in charge
18 and those that spoke and defined the plan and provided
19 you the information about what you were doing and why
20 you were doing it.
21 MR. THOMPSON: Objection as to form.
22 THE WITNESS: Officer Miner conducted some of
23 the briefing for... Sergeant Chretien, I remember him
24 talking about, you know, all the tactical
25 considerations. And other officers, probably who had

<p>MATTHEW DANZER - October 4, 2010 Direct Examination by Mr. Gosman</p> <p>1 knowledge -- firsthand knowledge of what was going on, 2 probably were also part of it. I can't think 3 specifically who all. 4 BY MR. GOSMAN: 5 Q. Okay. Well, were there any other officers 6 that had firsthand knowledge of what was going on, 7 other than Chretien and Miner? 8 MR. THOMPSON: Object as to form. 9 MS. WESTBY: Join. 10 THE WITNESS: I'm sure there were. 11 BY MR. GOSMAN: 12 Q. What kind of firsthand knowledge? Do you 13 know anything specific? 14 A. The officers that were on duty were the ones 15 who probably knew the most. I was called in, so I'm 16 not sure who knew what. 17 Q. Well, let's be realistic here. How were the 18 officers who were on duty, who have no idea what's 19 going on with this search warrant and weren't involved 20 with any of the discussions with the confidential 21 informant, have any firsthand knowledge of what's going 22 on? 23 MR. THOMPSON: Object as to form. 24 THE WITNESS: I don't understand the 25 question.</p>	<p>Page 85</p>	<p>MATTHEW DANZER - October 4, 2010 Direct Examination by Mr. Gosman</p> <p>1 Q. You don't know anyone, other than Officer 2 Miner, that had firsthand knowledge of what was going 3 on, with respect to the Wachsmuth's, which was the 4 reason that you were down there that night to serve a 5 warrant on their home? 6 MS. WESTBY: Objection. Asked and answered. 7 THE WITNESS: I'm not sure. I don't remember 8 at this point. 9 BY MR. GOSMAN: 10 Q. Okay. What did Officer Miner share with you? 11 You said he spoke. 12 A. Like information? 13 Q. Yes. 14 A. Okay. He gave details of what he had learned 15 from the confidential informant. 16 Q. Which were? 17 A. That there was a marijuana grow operation at 18 the house. 19 Q. Did he describe how big it was? 20 A. The confidential informant, I believe, had 21 given a number of plants or said something, or at least 22 Officer Miner had. I don't remember what the exact 23 number is, though. 24 Q. Twenty to 30? 25 A. I don't remember what the number is.</p>	<p>Page 87</p>
<p>MATTHEW DANZER - October 4, 2010 Direct Examination by Mr. Gosman</p> <p>1 BY MR. GOSMAN: 2 Q. You told me there were others -- and I need 3 to get this cleared up. Others who may have had 4 firsthand knowledge of what was going on. And maybe 5 that was just kind of a careless statement on your 6 part. But who had firsthand knowledge of what was 7 going on in the Wachsmuth residence that bore on the 8 question of this tactical response that was being 9 planned? 10 MS. WESTBY: Object to the form of the 11 question. 12 MR. THOMPSON: Join. 13 THE WITNESS: I don't know who all had 14 firsthand knowledge. 15 BY MR. GOSMAN: 16 Q. Do you know anybody who had firsthand 17 knowledge? 18 A. Officer Miner. 19 Q. Okay. Anybody else? 20 A. I don't remember who all. He was one, yes. 21 Q. He was one. 22 Do you remember that there were others who 23 had firsthand knowledge that was being considered there 24 that evening? 25 A. I don't know.</p>	<p>Page 86</p>	<p>MATTHEW DANZER - October 4, 2010 Direct Examination by Mr. Gosman</p> <p>1 Q. All right. So there were -- you do 2 specifically remember Officer Miner telling you there 3 were a number of plants at the Wachsmuth residence in 4 this marijuana grow operation? 5 A. Yes. 6 Q. And what else did he tell you? 7 A. Just what the, you know, confidential 8 informant had told him. 9 Q. We know that. You told me that already. But 10 I don't know what the confidential informant told him. 11 And I don't know what he told you. So that's what I'm 12 trying to get at here. 13 What did he tell you about what the 14 confidential informant had told him? 15 A. Beyond the grow operation, that gave the 16 names -- gave the name of an individual who was 17 conducting the grow operation. Some -- you know, 18 information about the individual. 19 Q. What information did he give you about the 20 individual? 21 A. That the male was Bret Wachsmuth. 22 Q. Okay. 23 A. That he was paranoid, that he carried guns on 24 his person, and that there were guns in the house, that 25 he liked to peek out windows. He was kind of always</p>	<p>Page 88</p>

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1 worried who might be outside his house. That he was on
2 medications and possibly -- he may be unstable, or --
3 I'm not sure the exact wording. But that's kind of the
4 gist I got.
5 Q. Okay. All right. And this was information
6 that was important for you to know?
7 A. Yes.
8 Q. Okay. And it was important for you to know
9 why?
10 A. What we would be facing as we executed the
11 search warrant.
12 Q. Somebody who was on medication and who had
13 firearms and who was paranoid, okay; is that correct?
14 Is that a fair summary?
15 A. Those are some of the things.
16 Q. Okay. What else?
17 MS. WESTBY: Object to the form of the
18 question. He's already given you the list.
19 BY MR. GOSMAN:
20 Q. Go ahead, though.
21 A. There's weapons placed around the house.
22 Some of them are loaded. He carries weapons on his
23 person. He uses drugs. You know, it differentiated
24 between, you know, prescriptions or, you know, illegal
25 drugs.

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1 Q. Uh-huh.
2 A. That he's paranoid, you know, kind of
3 unstable. We don't know how he might react to law
4 enforcement coming to serve a search warrant on his
5 house.
6 Q. I realize you're just a young officer, but
7 did it occur to you that maybe you want to knock on the
8 door and ask him to come to the door rather than try to
9 break into the house with a, you know, a team of armed
10 police officers and a flashbang device?
11 MS. WESTBY: I'm going to object to the form
12 of the question. Argumentative. Badgering. You're
13 tone is inappropriate.
14 Go ahead and answer the question if you can.
15 MR. THOMPSON: Join.
16 THE WITNESS: I think a lot of different
17 options were discussed that night or, you know, for the
18 execution of that search warrant. And I don't know
19 what all the options discussed were.
20 BY MR. GOSMAN:
21 Q. Were you involved in any of those discussions
22 about the options?
23 A. Yes.
24 Q. Okay. Well, what were they?
25 A. When I say "options," it's not necessarily

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1 limited to that area. I mean, options of who does
2 what, goes where, uses what.
3 Q. I'm talking -- you know, we're going to be
4 here all night.
5 I'm talking about options to a dynamic entry
6 when you have somebody who is paranoid and who has guns
7 in his house, and he's got marijuana plants in the
8 basement. What other options were talked about?
9 A. I know an option that was talked about was
10 whether to, you know, contact his father.
11 Q. And?
12 A. That was an option we -- you know, that was
13 discussed. I know that was discussed. I'm not sure if
14 I --
15 Q. Why didn't you do that? What was the reason
16 why that wasn't done?
17 A. I'm not -- I don't remember what all the
18 reasoning was behind it.
19 Q. Did you have any input in this?
20 A. In some aspects of it.
21 Q. Were you concerned at all that you were using
22 a dynamic entry when other options were clearly
23 available, such as calling Tom Wachsmuth and asking him
24 to bring his son either out of the house or down to the
25 police station?

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1 MS. WESTBY: Object to the form of the
2 question.
3 BY MR. GOSMAN:
4 Q. We're talking about someone who is paranoid
5 and has guns in the house, would have been a lot safer,
6 wouldn't it?
7 MS. WESTBY: Object to the form of the
8 question.
9 MR. THOMPSON: Join.
10 THE WITNESS: It was discussed.
11 BY MR. GOSMAN:
12 Q. And?
13 A. You know, options of would he have actually
14 come out? Could it make the situation worse?
15 Q. How could it make the situation worse,
16 Officer?
17 A. Well, if he wouldn't have come out.
18 Q. Okay.
19 A. Then, now he -- you know, knows there's a
20 search warrant. Has a chance to prepare weapons, other
21 things. A lot of different things.
22 Q. Okay. Anything can happen, right? But as a
23 police officer, you're trained to be objectively
24 reasonable about what may happen in a given situation,
25 right? That's your duty?

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1 MS. WESTBY: Object to the form of the
2 question.
3 BY MR. GOSMAN:
4 Q. Do you understand that?
5 A. My duty as to?
6 Q. Be objectively reasonable in the way you
7 apply force against citizens?
8 MS. WESTBY: Object to the form of the
9 question.
10 MR. THOMPSON: Join.
11 THE WITNESS: I want to be reasonable how I
12 conduct --
13 BY MR. GOSMAN:
14 Q. All right. Well, let's talk about that,
15 then, for just a second.
16 What made you think or anyone else in that
17 room that Tom Wachsmuth could not get his son to come
18 out of the door?
19 MR. THOMPSON: Objection as to form.
20 BY MR. GOSMAN:
21 Q. Is there any history? I mean, we had Miner
22 talking to a confidential informant for a few minutes,
23 maybe an hour. Was there any history that anyone was
24 aware of that would lead anyone to believe that Tom
25 Wachsmuth could not bring his son out of that house?

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1 SPEAKER 3: Objection as to form.
2 Speculation.
3 MS. WESTBY: Join.
4 THE WITNESS: For -- I can only answer for
5 myself, for one.
6 BY MR. GOSMAN:
7 Q. No. No. Well, you were in with a group, and
8 you had input. So I want you to answer -- I do want
9 you to answer for yourself.
10 You had an obligation as a police officer to
11 make sure that force was going to be objectively
12 reasonable. Did you stop to think why it was that Tom
13 Wachsmuth couldn't have been consulted in this case and
14 a SWAT entry avoided altogether?
15 A. I'm sure I thought about it. I don't
16 remember, though.
17 Q. Do you understand that you may have a legal
18 duty to consider these things and to prevent the -- to
19 prevent constitutional violations from taking place in
20 your presence?
21 MR. THOMPSON: Object to the form of the
22 question.
23 MS. WESTBY: Object to the form of the
24 question.
25

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1 BY MR. GOSMAN:
2 Q. Did you understand that?
3 MS. WESTBY: Object to the form of the
4 question.
5 THE WITNESS: Understand -- I'm sorry.
6 BY MR. GOSMAN:
7 Q. Did you understand as a police officer that
8 you can be liable for allowing constitutional
9 violations to take place when you have -- are present
10 and have an opportunity to object and intervene in the
11 situation?
12 MS. WESTBY: Object to the form of the
13 question.
14 MR. THOMPSON: Join.
15 THE WITNESS: I'm not sure if that was
16 discussed that night.
17 BY MR. GOSMAN:
18 Q. It probably wasn't. But I mean, did you know
19 that as a police officer, that you had that duty?
20 A. We are trained in how to respond in
21 situations.
22 Q. That didn't answer that question at all.
23 MR. THOMPSON: Counsel, you got to let him
24 answer the question.
25 MR. GOSMAN: I did.

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1 MS. WESTBY: No, you didn't.
2 MR. THOMPSON: No, you're not. You're
3 arguing with him.
4 MR. GOSMAN: No.
5 MR. THOMPSON: Yes, you are. You're asking
6 the question --
7 MR. GOSMAN: Let's answer that question.
8 MR. THOMPSON: For the record, you're asking
9 him a question and then you're halfway through his
10 answer interposing another question. That's why we're
11 not getting any place.
12 MR. GOSMAN: All right. I'll concede that
13 that's happened tonight.
14 BY MR. GOSMAN:
15 Q. Officer, were you aware that you had a duty
16 to prevent constitutional violations from taking place
17 in your presence --
18 MS. WESTBY: Object to the form --
19 BY MR. GOSMAN:
20 Q. -- on the 24th of February 2009?
21 MS. WESTBY: Object to the form of the
22 question. Misstates the law.
23 MR. THOMPSON: Join.
24 THE WITNESS: I'd agree. I don't know if
25 that's a fair statement.

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1 BY MR. GOSMAN:
2 Q. What is a fair assessment of your duty to
3 prevent constitutional violations?
4 MR. THOMPSON: Object as to form.
5 MS. WESTBY: Yeah.
6 THE WITNESS: I have a lot of duties. And
7 part of that is to uphold the Constitution, okay. And
8 a lot of that is subject to the case law interpretation
9 by judges. I can't possibly know all that.
10 BY MR. GOSMAN:
11 Q. All right. Well, you certainly knew that Tom
12 Wachsmuth was a reputable law enforcement officer in
13 the Powell area, didn't you?
14 MR. THOMPSON: Object as to form.
15 MS. WESTBY: Join.
16 THE WITNESS: I don't remember what my
17 thoughts were of him at that point.
18 BY MR. GOSMAN:
19 Q. Did you know about Tom Wachsmuth at that
20 point?
21 A. Yes.
22 Q. Did you know at that point that he was a
23 reputable law enforcement officer?
24 MS. WESTBY: Object --
25 THE WITNESS: I don't remember --

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1 MS. WESTBY: Object to the form of the
2 question.
3 THE WITNESS: -- what I thought of him at
4 that point.
5 BY MR. GOSMAN:
6 Q. What do you think of him now?
7 MS. WESTBY: Object to the form of the
8 question.
9 Go ahead and answer.
10 THE WITNESS: I think he's a DCI agent that
11 works in the Powell area.
12 BY MR. GOSMAN:
13 Q. Okay. All right. And he was a DCI agent
14 that worked in the Powell area on the night that the
15 Wachsmuth home was entered, correct?
16 A. Yes.
17 Q. Did you discuss the option of a knock and
18 talk warrant or execution of the warrant?
19 A. I believe these options were discussed. I'm
20 not sure I was a part of them.
21 Q. Okay.
22 A. But I believe they were discussed.
23 Q. And do you know why those options were
24 rejected in favor of this dynamic entry?
25 A. I don't remember --

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1 Q. You don't remember?
2 A. -- why they were or if they were discussed in
3 front of me.
4 Q. Did anyone in the group voice any concerns
5 about using such a show of force under the
6 circumstances?
7 A. I don't remember.
8 Q. Did you have any concerns about it?
9 A. Concerns about?
10 Q. The use of the dynamic entry with everyone
11 assembled there, the flashbang, the multiple teams, as
12 opposed to knocking on the door and asking to visit
13 with Tom -- or Bret Wachsmuth.
14 A. Not necessarily.
15 Q. Okay. What do you mean by "not necessarily"?
16 A. Well, my understanding of search warrants, a
17 lot of times -- well, specially one that, you know,
18 knock and announce, you go knock on the door, see if
19 they are willing to let you search. If they are not,
20 then you can search regardless of, you know, whether
21 they come to the door and cooperate.
22 So the plan was to knock on the door. If --
23 you know, entry was not given to us, to use other
24 options. I didn't have a problem with that.
25 Q. Okay. We'll talk about that later. And it

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1 is important what information you were processing at
2 the time this occurred, this plan was being described.
3 Did anyone tell you that -- did anyone bother to check
4 Mr. Wachsmuth's criminal record, Bret Wachsmuth's
5 criminal record?
6 A. I don't remember.
7 Q. Wouldn't that have been something that was
8 kind of important to know if you were going to plan a
9 SWAT entry?
10 MS. WESTBY: Object to the form of the
11 question.
12 MR. THOMPSON: Join.
13 THE WITNESS: That could be important.
14 BY MR. GOSMAN:
15 Q. No, that would be important, wouldn't it? I
16 mean, let's be fair about it.
17 MS. WESTBY: Object.
18 BY MR. GOSMAN:
19 Q. That's important information to know, isn't
20 it?
21 MS. WESTBY: Object to the form of the
22 question. Please refrain from those types of comments
23 or questions.
24 MR. THOMPSON: Join.
25

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1 BY MR. GOSMAN:
2 Q. That information would be important, wouldn't
3 it, Officer?
4 MS. WESTBY: Object to the form of the
5 question.
6 THE WITNESS: I said could be.
7 BY MR. GOSMAN:
8 Q. All right. Do you know whether there was any
9 information about whether Bret Wachsmuth had a history
10 of violence, any history of violence?
11 A. I don't remember.
12 Q. Would that have been important?
13 MS. WESTBY: Object to the form of the
14 question.
15 THE WITNESS: That would be something that
16 would be important to us.
17 BY MR. GOSMAN:
18 Q. Would you agree with me that it is more
19 appropriate to base decisions about what type of entry
20 team to use and what type of force to present on the
21 basis of objective evidence?
22 MR. THOMPSON: Object as to form.
23 MS. WESTBY: Yeah. Join.
24 THE WITNESS: Are you asking if you want to
25 be reasonable in how you conduct business or serve

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1 search warrants?
2 BY MR. GOSMAN:
3 Q. No. I'm talking about objective evidence as
4 opposed to subjective evidence, like the statement
5 "he's mentally unstable." I mean, I call that a
6 subjective statement. An objective statement is that
7 he's been in a mental institution and he waved a gun.
8 MS. WESTBY: Object to the form. Wait.
9 Object to the form of the question. Your definition is
10 not accurate, for one.
11 But go ahead and answer if you can.
12 THE WITNESS: I don't remember exactly what
13 was said and how it was said. That is my impression
14 that I remember at this point.
15 BY MR. GOSMAN:
16 Q. That he was mentally unstable, correct?
17 A. Of one of the things I said. He was
18 paranoid.
19 Q. Yeah, one of the things that was said was
20 that he was mentally unstable, apparently. Was there
21 any objective evidence of that discussed?
22 A. I don't remember.
23 Q. Okay. All right. Once it was decided -- let
24 me ask this question: Who decided to choose the option
25 that was chosen and to go forward with the dynamic

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1 entry team?
2 MS. WESTBY: Object to the form of the
3 question. As a -- you know, you're talking about
4 dynamic entry. That's your term.
5 MR. GOSMAN: Yes, it is. I agree with that.
6 It's not my term. It's a term that's used generally in
7 the law enforcement industry. That's true.
8 BY MR. GOSMAN:
9 Q. So who made the decision to do that?
10 A. I don't remember exactly. I mean, it's been
11 a year-and-a-half. I know Sergeant Chretien was, you
12 know, had a part in the decision.
13 Q. Okay. Chief Feathers?
14 A. I don't know for sure. But I'm guessing he
15 was consulted.
16 (Exhibit 10 identified)
17 BY MR. GOSMAN:
18 Q. I want you to go ahead and turn to
19 Exhibit 10.
20 Have you ever seen that document before?
21 A. I'm not sure.
22 Q. Were you given any diagrams of the house?
23 A. I believe so.
24 Q. How were they given to you? Were they --
25 explain how.

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1 A. I believe it was written up on a board.
2 Q. Okay.
3 A. But I don't remember for sure.
4 Q. Does it look familiar to the diagram, what
5 you saw on the board, to the diagram you are seeing
6 there on Exhibit 10?
7 A. At this point, I don't remember.
8 Q. Okay. Did you discuss any surveillance that
9 had been done on the home?
10 A. Yes.
11 Q. Okay. What did you discuss about
12 surveillance?
13 A. That an officer was conducting -- for one,
14 conducting surveillance on it. Just basically some of
15 his observations.
16 Q. Okay. Was he out there at the house right
17 then?
18 A. He was somewhere in the area.
19 Q. Had there been any other surveillance on the
20 home, other than Officer -- and I believe it was
21 Blackmore being there just before the operation took
22 place?
23 A. I know he was conducting surveillance on it.
24 Outside of what he was doing, I'm not sure if there was
25 anything else.

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1 Q. Did you learn that there was a small child in
2 the home?
3 A. That was something that was mentioned as a
4 possibility.
5 Q. Were you told that a small child had been
6 seen entering the home and not been seen exiting the
7 home prior to the service of that warrant?
8 A. I'm not sure small child is accurate.
9 Q. Okay.
10 A. Child, yes; entering the home, yes; hadn't
11 seen it leave, yes.
12 Q. Well, if you look on Exhibit 10, it actually
13 refers to the agent, child is a ten-year-old child,
14 boy, ten-year-old male perhaps. Do you see that there?
15 A. Yes.
16 Q. Do you have any reason to doubt that that was
17 the age of that child that was actually discussed that
18 night?
19 MR. THOMPSON: Objection as to form.
20 MS. WESTBY: Join.
21 THE WITNESS: I'm not sure if it was
22 determined what the age was or if that was just a
23 guess.
24 BY MR. GOSMAN::
25 Q. Okay. Well, was it -- was there a guess made

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1 that a ten-year-old child was in the residence?
2 MS. WESTBY: Object to form.
3 THE WITNESS: I don't remember if there was
4 an age put on it --
5 BY MR. GOSMAN:
6 Q. Okay.
7 A. -- for sure.
8 Q. What did you learn about the interior of the
9 home, in terms of the rooms that you would be asked to
10 clear?
11 A. I believe there was a diagram drawn to at
12 least the best information we had.
13 Q. All right. You see the diagram on
14 Exhibit 10. Do you see any rooms drawn in to the
15 outline of the home?
16 A. No.
17 Q. You didn't know where the rooms were in the
18 home when you went into that home; isn't that true,
19 Officer?
20 MS. WESTBY: Object to the form of the
21 question.
22 MR. THOMPSON: Join.
23 THE WITNESS: I don't remember.
24 BY MR. GOSMAN:
25 Q. Well, certainly you wouldn't have learned it

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1 from the information contained on Exhibit 10, correct?
2 MR. THOMPSON: Objection as to form.
3 THE WITNESS: I don't see an interior
4 diagram, if that's what you're asking.
5 BY MR. GOSMAN::
6 Q. Uh-huh. Okay. And you don't remember
7 whether there was an interior diagram provided to the
8 officers before you went into the home?
9 A. I don't know for sure.
10 (Exhibit 16 identified)
11 BY MR. GOSMAN:
12 Q. All right. Let's go ahead and turn to
13 Exhibit 16 now -- before we do that, let's take a look
14 at the list of officers there.
15 Take me through that list. And let's start
16 at the top. And I want you to tell me what each person
17 was assigned to do based on your best understanding.
18 A. You want me to start at the top of the list
19 and go down?
20 Q. Yes.
21 A. Brett, he was to go to the back door.
22 Q. And that's Brett who?
23 A. Lara.
24 Q. Okay.
25 A. Cody -- Cody Bradley, same.

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1 Q. Okay.
2 A. Matt Brilakis, he would have been on the
3 perimeter somewhere according to this. Curt Chapman
4 would go to the front of the house. Myself, front of
5 the house. Roy Eckerdt, front of the house. Mike
6 Chretien, front of the house. Mike Hall, front of the
7 house. Dave Brown, go to the back, back door. Lee
8 Blackmore, he was doing surveillance, perimeter. Alan
9 Kent, says bedroom. I'm not exactly sure what that's
10 referring to. Chad Miner, entry. And then it says
11 "ram door." So he was going to go to the front of the
12 house. And Matt McCaslin, evidence and bedroom.
13 Q. Okay. We have six -- we have six officers
14 that were involved in the entry. That's just a simple
15 matter of counting them up on the list, but would you
16 confirm that for me?
17 MR. THOMPSON: According to the document?
18 MR. GOSMAN: Yes.
19 THE WITNESS: There would be six according to
20 this document.
21 BY MR. GOSMAN:
22 Q. Okay. And did all of those officers have
23 what we call the long guns, this 9mm pistol with the
24 extension on it?
25 A. I'm not sure what everyone carried.

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1 Q. You don't remember that?
2 A. I don't remember what exact weapon everyone
3 was carrying.
4 Q. Okay. And who was in charge of the entry
5 team?
6 A. Sergeant Chretien.
7 Q. And were these assignments discussed before
8 you went to the house?
9 A. Assignments as in this list?
10 Q. Yes.
11 A. Yes.
12 Q. And was the other information that's
13 contained on Exhibit 10 discussed prior to your going
14 to the house?
15 MR. THOMPSON: Object to the form.
16 THE WITNESS: It contains topics we talked
17 about.
18 BY MR. GOSMAN:
19 Q. Okay. You notice there's a list on the
20 right-hand side of the page down towards the bottom.
21 It's a list that contains seven entries. And it sort
22 of sets out the sequence of events for this action. Do
23 you see that?
24 A. Yes, there's a number list here.
25 Q. Review that list for me for a second. And I

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1 warrant?
2 A. After we were, you know, went up to the front
3 of the house?
4 Q. No. While you were planning the operation.
5 A. While we were -- I'm sorry. What was the
6 question again?
7 Q. Yeah. Well --
8 MR. THOMPSON: You want to know the sequence
9 of events?
10 MR. GOSMAN: No, I don't.
11 BY MR. GOSMAN:
12 Q. I want to know the sequence in which the
13 events were to be staged that night based on the plan
14 you had.
15 A. Starting at what point?
16 Q. Knock on door. I mean, there's list of seven
17 items there, and that's what I'm referring to.
18 A. Well, the first thing it says is "knock
19 door."
20 Q. Right.
21 A. I mean, that's not descriptive.
22 Q. Yeah, it could mean knock it down, couldn't
23 it? We'll assume that means knock on door. Okay?
24 A. If that's where you want me to start --
25 Q. Yes.

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1 want you to tell me if that's what you were supposed to
2 do in that order.
3 A. (Witness complies.)
4 It looks like shorthand, you know, someone's
5 notes to themselves. But a lot of those ideas in that
6 list were talked about.
7 Q. That isn't what I asked, Officer. I asked if
8 that was the order in which you were to carry out the
9 plan that night?
10 A. This is not a detailed plan, that list.
11 Q. Well, I'll agree with you there. But I'm
12 talking about the order of events that are listed, one
13 through seven, on the right-hand side of the page. Is
14 that the sequence that you were instructed to carry out
15 that plan that night?
16 MR. THOMPSON: Objection as to form.
17 THE WITNESS: It wasn't -- it wasn't said --
18 exactly what was told to me. And we talked about it
19 wasn't said exactly how that's written down.
20 BY MR. GOSMAN:
21 Q. All right. Well, why don't you go ahead and
22 tell me what you remember about that.
23 A. Remember about what?
24 Q. About the sequence of events that were to
25 take place as part of the plan of execution of the

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1 A. Okay. First thing we were going to do was
2 knock on door.
3 Q. Yes.
4 A. And announce our presence.
5 Q. Yes.
6 A. Inform there was a search warrant. If no one
7 came to the door, then the other things that were
8 discussed were inserting a flashbang into the
9 bedroom -- a bedroom. Using a ram on the front door,
10 breaking a back window into the back door.
11 Q. Okay. And then -- oh, well, number seven,
12 did you say something about that?
13 A. Yes. Using a ram on the front door if it was
14 not opened to us.
15 Q. Okay. All right. What about this Tom
16 Wachsmuth stays in the lobby? Do you know anything
17 about that, if father shows up?
18 A. I didn't write this list, so I'm not sure
19 exactly what they were referring to on that.
20 Q. Okay. And I understand you didn't write the
21 list. All I asked you was: Do you know anything about
22 that?
23 A. I could -- the best I could do is take
24 guesses at what the exact meaning of that is.
25 Q. All right. Okay. Now, I want you to go

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1 ahead and take a look at Exhibit I6. Have you ever
2 seen that document before?
3 A. Yes.
4 Q. Okay. What is it?
5 A. It's a police report.
6 Q. Did you prepare a police report like this?
7 A. I prepared a police report.
8 Q. Okay. I don't know the answer to this. Why
9 didn't you prepare a police report that described the
10 events of the entry and the service of the warrant?
11 A. It was covered in someone else's report.
12 Q. Okay. All right. So is that the report that
13 it was covered in, Exhibit I6?
14 A. Could you repeat the question?
15 Q. Is that the report of the events that night?
16 A. This is part of it.
17 Q. Okay. Do you know of any other reports that
18 cover that information?
19 A. Well, this is the supplement. So there's
20 more supplements in this report.
21 Q. All right. I want you to turn your attention
22 to those paragraphs that start with "the plan was."
23 About the middle of the page. I want you to read those
24 first three paragraphs. They're small. "The plan was
25 for three officers to approach the back door."

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1 A. Okay. "The plan was for three officers to
2 approach the back door via wooden privacy fence in the
3 backyard. Their purpose was to secure the back door
4 and create a distraction by breaking a window in either
5 the south east bedroom, or the back door itself."
6 Q. Were you given that information as part of
7 the plan that night?
8 A. That was an option that we discussed.
9 Q. So was that information accurate?
10 A. I know we discussed it. I wasn't part of
11 that team, so ...
12 Q. So the language of that paragraph, accurately
13 represents what you discussed that night? That's all
14 I'm asking.
15 A. That was something that was discussed.
16 Q. Okay. Let's go on to the next paragraph.
17 A. Do you want me to read it?
18 Q. Yes, go ahead.
19 A. Okay. "Another officer, along with Officer
20 Blackmore, would secure the detached garage from
21 outside the fence. The fence connected the house to
22 the garage, and we would not know where a gate was
23 located."
24 Q. Was that discussed that night prior to your
25 going to the residence?

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1 A. I don't remember for sure.
2 Q. Okay. Let's go on to the next one. "Six
3 officers would form the primary entry team." Go ahead.
4 A. "Six officers would form the primary entry
5 team. One officer would carry the ram, the rest were
6 equipped with long guns. Two other officers" -- excuse
7 me -- "two other officers would form a distraction team
8 and follow the entry team in to secure prisoners, and
9 would be armed with pistols. One of these two would
10 carry the window rake, and the other the NFDD."
11 Q. Okay. Is that an accurate description of
12 information that was shared with you and the other
13 members of the team before you went to this Wachsmuth
14 residence?
15 A. We had talked about that.
16 Q. Okay. All right. Go ahead and take the next
17 paragraph.
18 A. "The plan was to knock on the front door and
19 announce 'police' -- in quotes -- "police, search
20 warrant" -- end of quotes. "If the door did not open
21 immediately, we would use the ram to force entry. The
22 primary entry team's responsibility was to secure the
23 residence and ensure the safety of everyone involved.
24 The follow-on officers would secure prisoners. Once
25 everyone was secure and the residence checked for

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1 threats, the evidence team would take over. We planned
2 to immediately remove any occupants to the police
3 station for interviews."
4 Q. Is that information contained in that
5 paragraph accurate as discussed with you before you
6 went into the home that night?
7 A. I don't remember.
8 Q. Well, you were part of the entry team. You
9 don't remember what you were told about going into the
10 home?
11 A. Not exactly.
12 Q. Is there anything there that you have any
13 disagreement with, and this is Officer Chretien's
14 report?
15 MR. THOMPSON: Object as to form.
16 MS. WESTBY: Join.
17 THE WITNESS: Other than that's just his
18 recollection of what was discussed. That's why he
19 prepared that report.
20 BY MR. GOSMAN:
21 Q. All right. My question was: Do you have any
22 disagreement with it? Do you disagree with his
23 recollection?
24 MR. THOMPSON: Object as to form.
25 THE WITNESS: I don't remember exactly for

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1 sure it was discussed, so ...
2 BY MR. GOSMAN:
3 Q. You don't remember whether it was discussed
4 that you would knock on the front door and announce
5 "police, search warrant"?
6 MR. THOMPSON: Object as to form.
7 THE WITNESS: Yes we discussed that.
8 BY MR. GOSMAN::
9 Q. Okay. "If the door did not open immediately,
10 we would use the ram to force entry."
11 A. I don't remember the exact wording on that.
12 Q. You got a problem with that, huh, Officer?
13 Is that where you have your problem?
14 MS. WESTBY: Object to the form of the
15 question. Argumentative.
16 MR. THOMPSON: Join.
17 BY MR. GOSMAN::
18 Q. Go ahead.
19 A. Well, it's his wording, not mine.
20 Q. Well, is it accurate?
21 A. I don't remember.
22 Q. I know it's his wording.
23 A. I don't remember what was exactly said.
24 Q. "One officer would carry the ram and the rest
25 were equipped with long guns," do you have any problem

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1 with that?
2 A. It sounds like -- you know, we discussed
3 that.
4 Q. You don't have any problem with that, then,
5 do you?
6 MS. WESTBY: Object to the form of the
7 question.
8 BY MR. GOSMAN::
9 Q. Yes or no?
10 A. Well, I previously answered a question saying
11 I don't remember exactly what every person entering the
12 front carried as a weapon. So that's one thing I can't
13 say for sure if they all had long guns. That's part of
14 that. And I don't remember.
15 Q. Okay. All right. Okay. Well, let's go down
16 to the next paragraph. "The plan was to knock on the
17 front door." Go ahead. I'm sorry. That's the one we
18 just read. "As the officers arrived and approached the
19 house."
20 A. "As the officers arrived and approached the
21 house, the dog started to bark out the front living
22 room window. Officer Chapman knocked on the front door
23 and announced, 'police, search warrant.'"
24 Q. Let's stop there. Did that happen? As it's
25 written there in the report?

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1 A. I don't remember.
2 Q. Do you remember the dog barking?
3 A. Yes.
4 Q. Okay. Where was the dog when he started
5 barking, do you know?
6 MR. THOMPSON: Object as to form.
7 THE WITNESS: I don't know.
8 BY MR. GOSMAN::
9 Q. You don't have any reason to disagree with
10 the statement there, though, that it was in the front
11 living room window, correct?
12 A. I guess that would be true.
13 Q. Do you know what kind of dog it was? Do you
14 remember that?
15 A. I didn't see the dog, but other people's --
16 you know, had said what it was.
17 Q. Other people later told you what the dog was?
18 A. (Witness nods head.)
19 Q. All right. So at that moment when the dog
20 started barking, where were you?
21 A. I was approaching the house, the front of the
22 house.
23 Q. So did the dog start barking before everybody
24 was ready?
25 A. Yes.

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1 Q. Did that cause things to be hurried up?
2 A. Yes.
3 Q. Officer Chapman knocked on the front door and
4 announced, "police, search warrant"; is that your
5 recollection of what happened?
6 A. I believe it was him.
7 Q. Okay. Somebody knocked on the door and said,
8 "police, search warrant"; is that your statement here,
9 Officer?
10 A. Yes.
11 Q. You heard someone say, "police, search
12 warrant," before or at the time the door was knocked?
13 A. Yes.
14 Q. And you heard someone -- and it looks like it
15 probably was officer Chapman, based on Chretien's
16 report, knock on the door? You heard that?
17 A. Yes.
18 Q. And it says that "When the door did not open,
19 Officer Miner forced it open with the ram"; is that
20 correct?
21 A. Yes.
22 Q. Okay. And the backyard team was not in
23 position when this occurred, correct?
24 A. Yes.
25 Q. All right. And that's how you remember it?

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1 A. Yes.
2 Q. And then it says down below, "As the door was
3 being rammed, Sergeant Kent used the window rake to
4 break the window in the northeast bedroom"; is that how
5 you remember that happening?
6 A. I don't know. I wasn't -- I didn't have
7 firsthand ...
8 Q. Okay. Did you hear the flashbang device
9 being deployed?
10 A. I heard it go off.
11 Q. Okay. Did it go off after the door was
12 rammed?
13 A. Yes.
14 Q. How long did it take between the ramming of
15 the door and the noise distraction device?
16 A. I have no idea of a time, how much time
17 passed.
18 Q. Okay. Would that be true of the sequence of
19 events, really from the time you got up to the door
20 until the time you got back out of the house?
21 A. What would be true?
22 Q. That you really don't have any recognition of
23 the actual time it took for the events to occur?
24 MR. THOMPSON: Objection as to form.
25 THE WITNESS: I don't know how long it took.

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1 Q. Okay. And did you notice where Tricia
2 Wachsmuth was when you entered the house?
3 A. Yes.
4 Q. Where was she?
5 A. She was sitting on the couch.
6 Q. How far from the door was she?
7 A. I don't remember for sure.
8 Q. Well, give me your best guess, Officer.
9 A. She was sitting in the living room. The
10 couch was in the living room.
11 Q. Uh-huh. And the couch was right up against
12 the picture window, correct? And it was right next to
13 the door, correct?
14 A. I don't remember for sure.
15 Q. What don't you remember about that?
16 MS. WESTBY: Object to the form of the
17 question.
18 THE WITNESS: I can't tell you 100 percent
19 that's where the couch was at and that's where she was
20 at.
21 BY MR. GOSMAN::
22 Q. You saw her sitting on the couch but you
23 don't know where the couch was at in the house?
24 A. It was in the living room.
25 Q. You don't know where it was in the living

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1 BY MR. GOSMAN::
2 Q. Okay. All right. So after the dog barked,
3 how long did it take before the battering ram was
4 employed?
5 A. I don't remember how much time had passed.
6 Q. And you weren't there, so you don't know what
7 McCaslin and Kent were doing on the side of the house
8 where the bedroom was, correct?
9 A. Correct.
10 Q. Did they join you in the house after they had
11 deployed the flashbang device?
12 A. At some point I think they came inside.
13 Q. Okay. All right. So who was the first
14 officer in the house?
15 A. I don't remember for sure.
16 Q. Who do you think?
17 A. Officer Chapman.
18 Q. Okay. Do you know if he tried the door
19 before he knocked it down?
20 A. I don't remember if he did.
21 Q. When you got in the house -- where were you
22 in the procession of folks entering the home?
23 A. I was one of the middle.
24 Q. Third perhaps or fourth?
25 A. I think I was the third person in.

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1 room?
2 A. Not for sure.
3 Q. All right. Did you ever see a diagram of the
4 house after you had entered it, completed your mission?
5 A. I don't know.
6 Q. Okay. Did you see an officer take control of
7 Tricia Wachsmuth?
8 A. No.
9 Q. Was somebody assigned to that responsibility?
10 A. No.
11 Q. That hadn't been figured out in the plan
12 before you went in, as far as you know?
13 A. Not that I remember.
14 Q. Did you see an officer point a weapon at
15 Ms. Wachsmuth?
16 A. No.
17 Q. Not once in the entire time that you were in
18 the house with Ms. Wachsmuth did you see an officer
19 point a weapon at her?
20 A. No.
21 Q. You'd had plenty of opportunities to see that
22 if it had occurred, correct?
23 A. Not necessarily.
24 Q. Tell me why not.
25 A. I entered the house.

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1 Q. Yes, I know that.
2 A. She was in the front of the house. I
3 proceeded past that area to continue to clear the rest
4 of the house.
5 Q. Had Ms. Wachsmuth been secured by the time
6 you went past that area into the rest of the house?
7 A. No.
8 Q. Go ahead.
9 A. Then we finished clearing the rest of the
10 house.
11 Q. Did you go down the stairs?
12 A. Yes.
13 Q. Okay. What were you doing with your weapon
14 when you went down the stairs?
15 A. I had my weapon down towards the ground. And
16 I believe I used the light on it to shine towards my
17 left to the open area, since it was dark down there.
18 Q. There was an opening in the stairway into the
19 basement --
20 A. The basement --
21 Q. -- walls?
22 A. The basement was to the left. The rest of
23 the basement was to the left
24 Q. Did you see what the other officers were
25 doing as they proceeded down the stairs?

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1 A. No.
2 Q. Why did Tricia Wachsmuth lead the group?
3 A. I don't know.
4 Q. That's fine. Did you see that?
5 A. Lead the group?
6 Q. Yes. Did you see her forced down the stairs
7 in front of the officers?
8 MR. THOMPSON: Object as to form.
9 THE WITNESS: No.
10 BY MR. GOSMAN::
11 Q. What did you see?
12 A. I saw her walk down the stairs.
13 Q. She just voluntarily led the group down the
14 stairs; is that your testimony?
15 MS. WESTBY: Object to the form of the
16 question.
17 MR. THOMPSON: Join.
18 THE WITNESS: I don't know how it came about
19 that she went down first.
20 BY MR. GOSMAN::
21 Q. All right. Did you help clear the basement?
22 A. I went downstairs.
23 Q. Okay. And did you -- how long were you down
24 there?
25 A. I don't remember for sure.

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1 Q. Okay. Was it more than a couple of minutes?
2 A. I don't remember for sure.
3 Q. Okay. From the time you entered the house
4 until the time you started back up those stairs, can
5 you tell me how much time elapsed?
6 A. I don't know.
7 Q. Okay. Could it have been ten minutes?
8 MS. WESTBY: Object to the form of the
9 question. Asked and answered.
10 THE WITNESS: I'd like to say no, but I don't
11 know.
12 BY MR. GOSMAN::
13 Q. Okay. Officer, you were aware that there was
14 a fire that started in the house, were you not?
15 A. No.
16 Q. Did you go into the bedroom where the
17 flashbang device had been deployed?
18 A. I don't remember. I don't think I did.
19 Q. Who were the officers that were -- well, let
20 me ask this question: As the group assembled to go
21 down to the basement, where were you in that
22 procession?
23 MR. THOMPSON: Objection as to form.
24 MS. WESTBY: Join.
25 THE WITNESS: Well, I was standing near the

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1 back door.
2 BY MR. GOSMAN::
3 Q. So you were the last one to go down the
4 stairs?
5 A. No.
6 Q. All right. Well, there were at least six men
7 with long rifles that were part of the entry team. I
8 assume that the entry team was responsible for clearing
9 the entire house, including the basement; is that true?
10 A. Yes.
11 Q. And so you couldn't all go down the stairs
12 abreast. There had to be sort of a line. Where were
13 you in that line?
14 A. I was the first one.
15 Q. Well, I think we've established that Tricia
16 Wachsmuth was the first one. So you were the second
17 person in that line?
18 MS. WESTBY: Object to the form of the
19 question.
20 MR. THOMPSON: Join.
21 THE WITNESS: I answered that based on the
22 fact that you were talking about officers, entry team
23 going in.
24 BY MR. GOSMAN::
25 Q. That's fair enough. So you were the first

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1 officer headed down the stairs?
2 A. Yes.
3 Q. Do you know where Chretien was?
4 A. No.
5 Q. Did you hear Chretien say, "Get her over
6 here"?
7 A. No.
8 Q. "She's going first"?
9 A. Not necessarily that phrase.
10 Q. What did you hear?
11 A. What did I hear of what? In reference to
12 what? To what Officer Chretien said?
13 Q. Yeah, that's what we're talking about.
14 A. I don't know the exact phrasing. But
15 something to the effect of telling Tricia to go down.
16 Q. Did Tricia stop and put her back to the wall?
17 A. No.
18 Q. When you arrived at the house, did you notice
19 the vehicles that were in front of it?
20 A. I don't remember what was in front of it.
21 Q. Do you know what kind of a vehicle Bret
22 Wachsmuth drove?
23 A. Not for sure.
24 Q. Well, Bret Wachsmuth was the threat, such as
25 it was in that warrant; isn't that true?

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1 MS. WESTBY: Object to the form of the
2 question.
3 MR. THOMPSON: Join.
4 THE WITNESS: Not necessarily.
5 BY MR. GOSMAN::
6 Q. Okay. Well, who or what else posed a threat
7 to the safety of the officers that night?
8 A. We had no idea who was going to be there.
9 Q. Really? You had no idea who was going to be
10 at the house?
11 A. I didn't know who was inside the house at the
12 time.
13 Q. You had Officer Blacmore conducting
14 surveillance. The entry plan indicates that there were
15 three people in the house, maximum. And you didn't
16 know any of that?
17 MR. THOMPSON: Objection as to the form.
18 Asked and answered.
19 MS. WESTBY: Objection as to the form and
20 argumentative.
21 THE WITNESS: Intel is not always good intel.
22 You don't always know if that's what you're going to
23 encounter.
24 BY MR. GOSMAN::
25 Q. All right. So Bret Wachsmuth was the threat

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1 that had been identified in your planning session
2 before going into the house, correct? You described
3 him as unstable, paranoid, he had guns in his house,
4 all that?
5 MS. WESTBY: Object to the form.
6 MR. THOMPSON: Join.
7 THE WITNESS: I didn't describe him as that.
8 BY MR. GOSMAN::
9 Q. Yes, you did. And he was the threat,
10 correct? He was the reason why you decided to get
11 everybody together, put on armor, get your long guns
12 out, take a flashbang, and go break in his door, right?
13 MS. WESTBY: Object to the form of the
14 question.
15 MR. GOSMAN: That is a little argumentative.
16 I'll agree with that.
17 MS. WESTBY: And if you would just please.
18 MR. GOSMAN: All right. I apologize. We'll
19 back up on that.
20 BY MR. GOSMAN::
21 Q. That's -- the reason why you used the force
22 that was used that night was because you were concerned
23 of officer safety that was presented by the threat of
24 Bret Wachsmuth, correct?
25 A. He was a concern.

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1 MS. WESTBY: Object.
2 BY MR. GOSMAN::
3 Q. He was the concern, wasn't he?
4 MS. WESTBY: Object to the form.
5 MR. THOMPSON: Join.
6 THE WITNESS: He was a concern.
7 BY MR. GOSMAN:
8 Q. All right. And well, you've got to help me
9 out here. It just can't be the universe of other
10 conceivable possibilities that could arise in a
11 situation.
12 Your job is to figure out what the risk and
13 the threat is, correct?
14 A. Part of it.
15 Q. And what other threat was there if it wasn't
16 Bret Wachsmuth?
17 A. Any other person inside the house did --
18 Q. A ten-year-old child?
19 MS. WESTBY: Object to the form. Again, this
20 is exactly what we talked about. He is answering your
21 question. Please calm down, be polite, and let him
22 finish his answer.
23 BY MR. GOSMAN:
24 Q. What other persons, Officer? I mean --
25 MS. WESTBY: And again, he's in the middle of

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1 an answer. He is in the middle of an answer.
2 MR. GOSMAN: He just said other persons.
3 BY MR. GOSMAN:
4 Q. Go ahead. Did I interrupt your answer?
5 A. Yes.
6 Q. All right. Go ahead and finish.
7 A. I don't remember what I was ...
8 Q. Well, we're talking about all the possible
9 threats that you were concerned about that night when
10 you entered the Wachsmuth's residence. We identified
11 Bret. He was the one you talked about. And we talked
12 about a child that was in the house.
13 A. That was mentioned.
14 Q. Yes. And we talked about the possibility of
15 who -- of Tricia being in the house. Who else, as a
16 realistic objective concern, would have been present in
17 that house that you had to be concerned about?
18 MS. WESTBY: Object to the form.
19 MR. THOMPSON: Join.
20 THE WITNESS: I'd be concerned about anyone
21 else who could have been there, including friends. Any
22 person they could have invited over. There's --
23 BY MR. GOSMAN:
24 Q. In other words, anyone that they --
25 MR. THOMPSON: Counsel --

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1 MR. GOSMAN: Go ahead.
2 MR. THOMPSON: Let him answer.
3 BY MR. GOSMAN:
4 Q. All right. Are you done?
5 A. I understand --
6 MS. WESTBY: You keep interrupting him.
7 MR. THOMPSON: If faced with a summary
8 judgment motion, you're going to say, no, he didn't
9 answer this way. That's because he's never been given
10 the chance.
11 MR. GOSMAN: Yeah. Okay.
12 BY MR. GOSMAN:
13 Q. All right. Well, you know, you're a police
14 officer. This is not a, you know, a game here. You
15 have to identify objective dangers that were present
16 that night. And we talked about Bret Wachsmuth.
17 And I want to know what other objective
18 dangers were there at that house that you had to be
19 afraid of that caused a concern for officer safety?
20 MS. WESTBY: Object to the form of the
21 question. He has attempted to answer your question.
22 If you want him to run through the list again, then
23 don't interrupt him as he's going through the list.
24 MR. GOSMAN: Well I'm taking issue you with
25 the fact that he's saying that anyone who was at the

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1 house could have been a threat to the safety of the
2 officers.
3 MS. WESTBY: You know what? Because you
4 don't like his answer to the question does not mean
5 it's not an answer.
6 MR. GOSMAN: That's true.
7 BY MR. GOSMAN:
8 Q. All right. Is that your answer? I'm talking
9 about objective dangers that were present at the
10 Wachsmuth home that night when the planning was done.
11 And are you telling me that anyone else who was in that
12 home represented an objective danger to the officers?
13 MS. WESTBY: Object to the form of the
14 question. Answer if you can.
15 THE WITNESS: Possibly.
16 BY MR. GOSMAN:
17 Q. All right.
18 A. In law enforcement, we function in worst-case
19 scenario situations. One thing we're trained in is the
20 plus one rule. If there's one threat, you know,
21 there's -- there could be another threat. And that's
22 how we're trained.
23 So if we're trained there's going to be one
24 threat, then that threat has a friend who could be a
25 threat. And that friend could have brought a friend

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1 with him, could have been a threat, could have been a
2 house full of threats. We don't know.
3 Q. Okay. Was there any evidence that Bret
4 Wachsmuth had any other friends that posed a danger to
5 police officers?
6 MS. WESTBY: Object to the form of the
7 question.
8 MR. THOMPSON: Join.
9 THE WITNESS: At what point?
10 BY MR. GOSMAN:
11 Q. Any point. Well, before the raid.
12 A. We didn't know who all would be in that
13 house.
14 Q. No, that's not what I asked, Officer. And I
15 do need you to just answer this question. And that is:
16 Was there anybody mentioned who would have been a
17 friend of Bret Wachsmuth who would have posed a threat
18 to the safety of officers that might have been in that
19 house?
20 MS. WESTBY: Object to the form of the
21 question. Asked and answered over again.
22 MR. THOMPSON: Join.
23 THE WITNESS: I don't remember who all was
24 discussed that night. I can tell you what -- going
25 through my mind. But I don't know who all we talked

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1 about. Another name was dropped, it's possible I
2 didn't remember.
3 BY MR. GOSMAN:
4 Q. And you don't remember any other name?
5 A. No.
6 (Exhibit 22 identified)
7 BY MR. GOSMAN:
8 Q. All right. Let's go ahead and turn to
9 Exhibit 22 for a minute. And is this your report?
10 A. Yes.
11 Q. And you apparently were the officer that
12 searched Bret Wachsmuth's vehicle?
13 A. I was one of them.
14 Q. Okay. What kind of vehicle was it, do you
15 remember? Is it identified in the report? It probably
16 is.
17 A. Yes.
18 Q. What kind of vehicle was it?
19 A. Chevy Blazer.
20 Q. And had you been told that Bret Wachsmuth
21 drove a Chevy Blazer before you went to the house that
22 night?
23 A. I don't remember for sure.
24 Q. It's true that Bret Wachsmuth was not at the
25 house that night, correct?

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1 MR. THOMPSON: Objection as to form.
2 BY MR. GOSMAN:
3 Q. At least when you arrived?
4 A. The house we did the search warrant?
5 Q. Yes.
6 A. He was not there while I was there.
7 Q. And were you with Bret when he was taken into
8 custody?
9 A. Yes.
10 Q. Okay. Was he armed?
11 A. Armed as in?
12 Q. A weapon of any kind.
13 A. Any kind, I don't know. I don't remember.
14 Q. Okay. That would have been pretty important
15 for a guy that you were so concerned about, wouldn't it
16 have been?
17 MS. WESTBY: Object to the form of the
18 question.
19 BY MR. GOSMAN:
20 Q. You don't remember whether he was armed?
21 A. If you said -- if you said, "any weapon," I
22 don't know if he had any weapons on him.
23 Q. What are we talking about? When I say any
24 weapons.
25 A. You used that. I don't know.

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1 Q. Ballpoint pens?
2 A. Yeah, they could all be weapons.
3 Q. Okay. All right. Did he have a gun?
4 A. No.
5 Q. Did he have a knife.
6 A. I don't remember.
7 Q. Did he offer any resistance at all?
8 A. No.
9 Q. How about Tricia Wachsmuth, did she offer any
10 resistance at all?
11 A. Resistance of what?
12 Q. Resistance.
13 A. Of what?
14 Q. Of the authority of the officers in the
15 house?
16 MR. THOMPSON: Objection. Asked and
17 answered.
18 THE WITNESS: She didn't open the front door.
19 I guess that would be -- the answer is yes.
20 BY MR. GOSMAN::
21 Q. How much time did you give her to open the
22 door, Officer?
23 A. I don't know how much time passed between --
24 exact time passed between.
25 Q. Couple seconds?

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1 MS. WESTBY: Object as to the form of the
2 question.
3 MR. THOMPSON: Join. Argumentative.
4 THE WITNESS: I don't remember the exact
5 time.
6 BY MR. GOSMAN:
7 Q. Could have been a couple seconds, huh?
8 MS. WESTBY: Object to the form of the
9 question.
10 BY MR. GOSMAN:
11 Q. Go ahead and answer.
12 MR. THOMPSON: Join.
13 THE WITNESS: I don't know if it was a couple
14 seconds or if it was longer. I don't remember the
15 exact time frame.
16 BY MR. GOSMAN:
17 Q. Do you know whether she even had time to get
18 up and answer the door?
19 MR. THOMPSON: Objection as to form.
20 Speculation.
21 MS. WESTBY: Join.
22 THE WITNESS: I don't know. I couldn't see
23 her inside the house, so I guess there's no way of
24 knowing if she could have made it to the door. I
25 didn't know if she was in the bathroom. I don't know.

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1 Couldn't see inside the house.
 2 BY MR. GOSMAN:
 3 Q. Well, let's assume she was sitting on the
 4 couch and the couch was against the window, and the
 5 window was next to the door. Did she have time to get
 6 up and answer the door?
 7 MR. THOMPSON: Object to form.
 8 MS. WESTBY: Join.
 9 THE WITNESS: You're asking for my opinion?
 10 BY MR. GOSMAN:
 11 Q. No, I'm not asking for your opinion. I'm
 12 asking you to tell me, if based on what you know, she
 13 had time to get up and answer the door?
 14 MS. WESTBY: Object to the form.
 15 BY MR. GOSMAN:
 16 Q. And if you don't know --
 17 MS. WESTBY: The question by its nature calls
 18 for speculation. So when he answers it that way, he is
 19 being honest and truthful. Do not badger him. Do not
 20 be disrespectful.
 21 THE WITNESS: And that is why I asked you,
 22 "Do you want my opinion?" Because that's how you posed
 23 the question to me.
 24 BY MR. GOSMAN:
 25 Q. Okay. You don't have any idea how much time

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1 elapsed between the moment that officer Chapman
 2 announced, "police, search warrant," and the door was
 3 rammed?
 4 A. I don't know exact time elapsed, no.
 5 Q. And you're unable to give any kind of
 6 estimate?
 7 A. I wasn't looking at my watch. I wasn't
 8 counting necessarily out loud in my head.
 9 Q. All right. Other than the fact that you
 10 consider it to be resistance that Ms. Wachsmuth didn't
 11 get up to answer the door, did she display any other
 12 resistance to the commands or directions of the police
 13 officers?
 14 MR. THOMPSON: Objection as to form.
 15 MS. WESTBY: Join.
 16 THE WITNESS: I don't know. Because I wasn't
 17 with her the whole time.
 18 BY MR. GOSMAN:
 19 Q. Do you know when she was handcuffed?
 20 A. Not for sure.
 21 Q. Was she handcuffed when she went down the
 22 stairs?
 23 A. She was not in handcuffs.
 24 Q. Do you know why not?
 25 A. I don't.

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1 Q. Should she have been in handcuffs?
 2 MS. WESTBY: Object to the form.
 3 THE WITNESS: She was directed -- I mean,
 4 there was a conversation or the discussion, all that
 5 took place. I wasn't even right there. So I don't --
 6 I don't know what took place. I can't make a judgment
 7 call on that.
 8 BY MR. GOSMAN:
 9 Q. You started to say she was directed. What
 10 did you mean by that?
 11 A. I'm not sure, because I didn't finish.
 12 Q. Because you didn't finish, you're not sure
 13 what you meant?
 14 MS. WESTBY: Object to the form of the
 15 question.
 16 THE WITNESS: I don't know. Because I used a
 17 different word.
 18 BY MR. GOSMAN:
 19 Q. She was directed to take you downstairs
 20 wasn't she, and lead the group?
 21 MS. WESTBY: Object to the form of the
 22 question.
 23 MR. THOMPSON: Join.
 24 THE WITNESS: I wasn't there -- I wasn't in
 25 that conversation, so I don't know.

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1 BY MR. GOSMAN:
 2 Q. You said you heard Chretien say, "Come here."
 3 A. No.
 4 Q. What was it that you heard him say? I may be
 5 wrong.
 6 A. He said something to the effect of, "go
 7 downstairs." I don't remember what he exactly said.
 8 That's my impression of what I got from that. From
 9 what I heard at least.
 10 Q. Was she within the custody and control of the
 11 police officer at that time?
 12 MS. WESTBY: Object to the form of the
 13 question.
 14 MR. THOMPSON: Join.
 15 THE WITNESS: What do you mean by "custody
 16 and control"?
 17 BY MR. GOSMAN:
 18 Q. I mean, was she in custody? Was she being
 19 held?
 20 MS. WESTBY: Same objection.
 21 BY MR. GOSMAN:
 22 Q. Was she free to leave the house?
 23 MS. WESTBY: Calls for a legal conclusion.
 24 And you're changing your question. Every single one of
 25 your questions is different.

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1 MR. THOMPSON: Join.
2 MS. WESTBY: Which question are you asking
3 him to answer?
4 BY MR. GOSMAN:
5 Q. Was Ms. Wachsmuth free to leave the house
6 when Officer Chretien said whatever he said to her
7 about going downstairs?
8 A. I don't know what their conversation was.
9 So, I don't know.
10 Q. Well -- okay.
11 A. I can't say for sure.
12 Q. Was she free to leave the house when that
13 conversation occurred?
14 A. I wasn't in that conversation.
15 Q. She was in custody, wasn't she?
16 MS. WESTBY: Object to the form of the
17 question. Calls for a legal conclusion. It's a
18 different question.
19 Go ahead and answer if you can.
20 THE WITNESS: I don't know if she was in
21 custody at that point.
22 BY MR. GOSMAN:
23 Q. Officer, are you telling me that you don't
24 know whether Ms. Wachsmuth was free to leave the house
25 after you'd busted down the door and everybody entered

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1 the house and the flashbang had gone off in the
2 bedroom? You don't know whether she was free to leave
3 the house? You're trained as a police officer.
4 MS. WESTBY: Object to the form of the
5 question. I don't even know -- that's just rude
6 commentary. I don't even know if that's a question.
7 BY MR. GOSMAN:
8 Q. You don't know whether she was free to leave
9 the house?
10 A. I wasn't standing next to her. I don't know
11 what the conversation took place. I didn't know if
12 somebody could have told her, "Hey, you can leave." I
13 didn't know.
14 Q. Okay.
15 A. I would have to speculate to her interactions
16 with other officers. I can't, because I don't know.
17 Q. Did Ms. Wachsmuth leave the house in
18 handcuffs?
19 A. Yes.
20 MR. GOSMAN: I don't have any further
21 questions. Thank you very much. Have a safe trip back
22 to Bozeman.
23 THE WITNESS: Thank you.
24 MS. WESTBY: Okay. We'll read and sign,
25 okay?

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1 THE WITNESS: What's that?
2 MS. WESTBY: Read and sign. You'll have an
3 opportunity to look it over, check it for spelling or
4 those kind of errors.
5 THE WITNESS: Okay.
6 MS. WESTBY: And then sign it and send it
7 back.
8 THE WITNESS: Okay.
9 MS. WESTBY: Do you want it sent to your
10 office address or do you want it sent to a different
11 address?
12 THE WITNESS: Yeah, that's fine.
13 (Proceedings concluded at 7:46
14 p.m., October 4, 2010.)
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1 DEPONENT'S CERTIFICATE
2 I, MATTHEW DANZER, do hereby certify, under
3 penalty of perjury, that I have read the foregoing
4 transcript of my testimony consisting of 147 pages,
5 taken on October 4, 2010 and that the same is, with any
6 changes noted below, a full, true and correct record of
7 my deposition.
8 PAGE LINE CORRECTION REASON FOR CORRECTION
9 _____
10 _____
11 _____
12 _____
13 _____
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15 _____
16 _____
17 _____
18 _____
19 _____
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21 _____
22 _____
23 _____
24 _____
25 _____

MATTHEW DANZER Date

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CERTIFICATE

1
2 I, VONNI R. BRAY, Registered Professional
3 Reporter, and Notary Public for the State of Montana,
4 do hereby certify that MATTHEW DANZER was by me first
5 duly sworn to testify to the truth, the whole truth,
6 and nothing but the truth;

7 That the foregoing transcript, consisting of
8 148 pages, is a true record of the testimony given by
9 said deponent, together with all other proceedings
10 herein contained.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand this 15th day of October, 2010.

13

14

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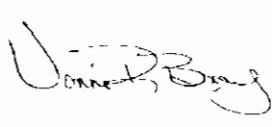
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	87:24	128:12	agency (2)	38:24;40:17;57:6,16;
1	31 (5)	academy (2)	25:21;56:10	58:10;60:5;76:1;87:6;
	18:21,24;19:3;27:23,	12:1.2	agent (3)	118:10;127:9;128:21;
	24	accommodate (1)	98:10,13;105:13	130:18;136:21;139:17
10 (7)	35 (11)	4:12	ago (3)	apologize (2)
103:16,19;104:6;	22:14,18,22,23,24;	accomplished (1)	39:5;41:8;74:10	34:9;131:18
105:12;106:14;107:1;	23:14,23;24:8,27;20,21;	25:4	agree (8)	apparently (6)
109:13	43:21	according (3)	68:24;71:6;74:7;	4:5;42:13;49:7;56:5;
100 (2)	35s (1)	108:3,17,19	96:24;101:18;103:5;	102:20;137:11
24:21;123:18	27:22	accurate (7)	110:11;131:16	appear (1)
11 (1)	36 (4)	24:21;102:10;105:8;	agreed (1)	22:18
36:3	22:17,17,21;24:7	114:9;115:11;116:5;	4:11	appears (3)
116 (2)	37 (1)	117:20	agreement (1)	23:6,10;24:15
56:7,7	55:20	accurately (2)	46:1	apply (2)
15 (1)		67:15;114:12	ahead (57)	13:6;93:7
65:19	4	acquired (1)	5:1;10:22;11:3;12:23;	Appreciate (2)
16 (4)		36:18	15:25;17:13;18:23;	8:10;44:19
107:10,13;113:1,13	4 (2)	act (3)	19:23;21:1,6;22:16;	approach (3)
16th (1)	80:6;147:14	31:21;72:25;73:1	25:11;27:11;28:16;	31:5;113:25;114:2
8:16	4th (1)	acting (1)	29:25;30:8;32:6;33:23;	approached (2)
18 (2)	23:1	48:20	34:9;43:2;47:9;52:2;	118:18,20
65:20;66:13		action (8)	55:12;56:17;60:8;61:19;	approaching (1)
19 (1)	5	18:3;29:18,22;30:10;	65:3,12,19;66:14;67:1,	119:21
42:5		36:1;40:8;71:24;109:22	20:71;9,14;74:20;79:12;	appropriate (2)
2	50 (2)	active (8)	80:8;89:20;90:14;98:9;	59:21;101:19
	62:9;69:14	28:17,24;43:10;55:18;	102:11;103:18;107:12;	appropriately (1)
20 (1)	50-hour (4)	70:1,17,24;72:20	110:21;113:1;114:18;	59:20
66:20	28:8;35:21;57:21;60:2	activity (2)	115:3,16;117:18;	approved (10)
2004 (2)		48:18;56:11	118:17;125:8;133:4,6;	19:17,21;20:18,19;
11:12;12:19	6	actual (2)	134:1;137:8;140:11;	27:18;81:23,25;82:4,7,8
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23:2;36:10,19;37:3;	6 (1)	actually (15)	Alan (1)	24:25;73:14;91:1;
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